

Proposal Guidelines for Brownfields Assessment, Revolving Loan Fund, and Cleanup Grants



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1. The National Brownfields Program and the New Brownfields Law

These guidelines are provided pursuant to Federal Register Notice No. ____ and in accordance with Catalog of Federal Domestic Assistance #66.811 (a revised CFDA # entry has been submitted for approval). A brownfield site is “real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant,” as defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 §101(39), as amended (CERCLA). The new Small Business Liability Relief and Brownfields Revitalization Act (“Brownfields Law” or “the Law”, P.L. 107-118) requires the U.S. Environmental Protection Agency (EPA) to publish guidance to assist applicants in preparing grant proposals. These guidelines implement that requirement for assessment, revolving loan fund, and cleanup grants. EPA estimates that \$100 million will be available to make up to 200 grant awards, contingent upon the availability of funds in FY 2003.

1.1. BACKGROUND

In the early 1990s, stakeholders expressed their concerns to EPA about the problems associated with brownfields across the country. More than 600,000 properties that were once used for industrial, manufacturing, or other commercial uses were lying abandoned or underused due to the suspicion of hazardous substance contamination. Brownfield areas, particularly those in city centers, were contributing to blight and joblessness in surrounding communities. Unknown environmental liabilities were preventing communities, developers, and investors from restoring these properties to productive use and revitalizing impacted neighborhoods.

In 1994, EPA responded to the brownfield problem with an environmental protection approach that is locally based, encourages strong public-private partnerships, and promotes innovative and creative ways to assess, clean up, and redevelop brownfield sites. This approach empowers state, tribal, and local environmental and economic development officials to oversee brownfield activities, and encourages implementing local solutions to local problems. EPA also has provided funding to create local environmental job training programs to ensure that the economic benefits derived from brownfield revitalization efforts remain in local neighborhoods.

1.2. THE NEW BROWNFIELDS LAW

On January 11, 2002, President George W. Bush signed into law the Small Business Liability Relief and Brownfields Revitalization Act. The Brownfields Law expands potential federal financial assistance for brownfield revitalization, including grants for assessment, cleanup, and job training. The new law also limits the liability of certain contiguous property owners and prospective purchasers of brownfield properties, and clarifies innocent landowner defenses to encourage revitalization and reuse of brownfield sites. The Brownfields Law also includes

provisions to establish and enhance state and tribal response programs, which will continue to play a critical role in the successful cleanup and revitalization of brownfields.

The Brownfields Law contains some features that are important for grant applicants to keep in mind when using these guidelines.¹ Some of those features are summarized below.

- The Brownfields Law expands eligibility for brownfields funding by broadening the entities eligible for funding. It also permits the award of cleanup grants to eligible entities, including nonprofit organizations, that own the property they wish to clean up. EPA has adopted a definition of nonprofit organizations that includes universities and other nonprofit educational institutions. In addition, EPA will continue its policy of accepting proposals from “coalitions,” or groups of eligible entities, to pool their revolving loan capitalization grant funds. A coalition is a grouping of two or more eligible entities joined together under one grant recipient. The grant recipient must administer the grant, is accountable to EPA for proper expenditure of the funds, and will be the point of contact for the other coalition members.
- The Brownfields Law defines a brownfield site broadly, but does exclude certain sites from funding eligibility unless EPA makes a property-specific determination to fund (see *Appendix 3* for additional information). This determination will be based on whether or not awarding a grant will protect human health and the environment and either promote economic development or enable the property to be used for parks, greenways, and similar recreational or nonprofit purposes. (See *Appendix 3* and *Appendix 4* for more information on “eligibility for funding” and “property-specific determinations.”)
- Generally, the law allows EPA to award brownfield grant funds for activities at petroleum-contaminated sites that: 1) EPA or the state determines are of “relatively low risk” compared with other petroleum-contaminated sites in the state; 2) EPA or the state determines have no viable responsible party and that will be assessed, investigated, or cleaned up by a person that is not potentially liable for cleaning up the site; and 3) are not subject to a Resource Conservation and Recovery Act (RCRA) 9003(h) order. EPA must make available 25 percent of the total grant funds for assessment and/or cleanup of petroleum-contaminated sites. EPA has designed these guidelines to allow applicants to specify the amount of funding that will be used at petroleum-contaminated sites. (See *Appendix 3* for additional information.)
- The Brownfields Law requires a 20 percent cost share for revolving loan fund and cleanup grants.
- Grant funds cannot be used for administrative costs. Grant funds cannot be used to pay response costs at a brownfield site for which the recipient of the grant or loan is potentially liable under CERCLA §107. (See *Appendix 2, Prohibition on Use of Funds*, for additional prohibitions).

¹The authority to provide grants in the Brownfields Law is codified at §104(k) of CERCLA.

- Under the Brownfields Law, a local government may use up to 10 percent of its grant funds for monitoring the health of populations exposed to one or more hazardous substances, pollutants, or contaminants from a brownfield site and monitoring and enforcement of any institutional control used to prevent human exposure to any hazardous substance, pollutant, or contaminant from a brownfield site. To effectively oversee assessments and cleanups, local governments may use grant funds (subject to the 10 percent limit) for other related program development and implementation activities.

For additional information, contact your Regional Brownfields Contact listed in *Appendix I*.

2. Summary of Brownfields Grant Programs

Three competitive brownfields grant programs are discussed in these guidelines: assessment grants, revolving loan fund (RLF) grants, and cleanup grants. Eligible applicants, including those with existing brownfields grants, may apply for one, or all, of the grant programs. Contact your EPA Regional representative for assistance.

2.1. APPLICANT ELIGIBILITY

The following table indicates, by grant program, what types of entities are eligible to receive EPA funds for brownfields assessment, RLF, and cleanup grants:

Type of Applicant	Assessment	RLF ¹	Cleanup ¹
General Purpose Unit of Local Government ²	✓	✓	✓
Land Clearance Authority or other quasi-governmental entity that operates under the supervision and control of, or as an agent of, a general purpose unit of local government	✓	✓	✓
Government Entity Created by State Legislature	✓	✓	✓
Regional council or group of general purpose units of local government	✓	✓	✓
Redevelopment Agency that is chartered or otherwise sanctioned by a state	✓	✓	✓
State	✓	✓	✓
Indian Tribe other than in Alaska ³	✓	✓	✓
Alaska Native Regional Corporation, Alaska Native Village Corporation, and Metlakatla Indian Community ⁴	✓	✓	✓
Nonprofit organizations ⁵			✓

¹ To be eligible for a cleanup grant or an RLF subgrant, the fund recipient must own the site for which they seek funding.

² For purposes of the brownfields grant program, EPA defines general purpose unit of local government as a “local government” as that term is defined under 40 CFR Part 31.

³ Intertribal Consortia are eligible for funding in accordance with EPA’s policy for funding intertribal consortia to be published in the Federal Register. This policy also may be obtained from your Regional Brownfields Contact.

⁴ Alaska Native Regional Corporations and Alaska Native Village Corporations are defined in the Alaskan Native Claim Settlement Act (43 U.S.C. 1601 and following).

⁵ For the purposes of the brownfields grant program, EPA will use the definition of nonprofit organizations contained in Section 4(6) of the Federal Financial Management Assistance Act of 1999, Public Law 96-107.

2.2. ASSESSMENT GRANT PROGRAM

Assessment grants provide funding for a grant recipient to inventory, characterize, assess, and conduct planning and community involvement related to brownfield sites.

- An eligible entity may apply for up to \$200,000 to address sites contaminated by hazardous substances, pollutants, or contaminants (including hazardous substances co-mingled with petroleum) and up to \$200,000 to address sites contaminated by petroleum. Grant funds may not exceed \$400,000 per applicant unless a waiver is requested, which must be based on the anticipated level of contamination, size, or ownership status of the site. Applicants may request a waiver of the \$200,000 limits up to \$350,000 for sites contaminated by hazardous substances, pollutants, or contaminants (including hazardous substances co-mingled with petroleum) and up to \$350,000 to address sites contaminated by petroleum. Due to budget limitations, no entity may apply for funding assessment activities in excess of the \$700,000 as described above.
- The performance period for these grants generally will be two years.
- Refer to *Appendix 2, Prohibitions on Use of Funds*, for more information on activities that may not be funded using brownfields grant funds.

2.3. REVOLVING LOAN FUND GRANT PROGRAM

Revolving Loan Fund grants provide funding for a grant recipient to capitalize a revolving loan fund and to provide subgrants to carry out cleanup activities at brownfields sites.

- An eligible entity may apply for up to \$1,000,000 for an initial RLF grant. Coalitions of eligible entities may apply together under one recipient for up to \$1,000,000 per eligible entity. These funds may be used to address sites contaminated by petroleum and hazardous substances, pollutants, or contaminants (including hazardous substances co-mingled with petroleum).
- Proposals may be submitted by “coalitions,” or groups of eligible entities, to pool their revolving loan capitalization grant funds. A coalition is a grouping of two or more ***eligible entities*** joined together under one grant recipient. The grant recipient must administer the grant, be accountable to EPA for proper expenditure of the funds, and be the point of contact for the other coalition members. Members of the coalition other than the grant recipient must submit letters agreeing to be part of the coalition.

- An RLF grant recipient must use at least 60 percent of the awarded funds to capitalize a revolving loan fund. Revolving loan funds generally are used to provide no-interest or low-interest loans for brownfields cleanups. An RLF grant recipient also may use its funds to award subgrants to other eligible entities, including nonprofit organizations, for brownfields cleanups on sites owned by the subgrantee; however, an RLF grant recipient may use no more than 40 percent of the awarded funds for cleanup subgrants. Unlike loans, cleanup subgrants do not require repayment.
- An RLF award requires a 20 percent cost share, which may be in the form of a contribution of money, labor, material, or services, and must be for eligible and allowable costs (the match must equal 20 percent of the amount of funding provided by EPA and cannot include administrative costs). An RLF grant applicant may request a waiver of the 20 percent cost share requirement based on hardship. Applicants must contact their Regional representative (listed in *Appendix 1*) to discuss applying for a waiver prior to submitting Initial Proposals.
- Existing Brownfields Cleanup Revolving Loan Fund (BCRLF) recipients who were awarded funding prior to January 11, 2002, may choose to “transition” their grants to the requirements of the new law. BCRLF recipients who choose to transition must comply with all requirements of the new law. BCRLF recipients who do not choose to transition will continue to operate pursuant to the terms and conditions of their existing cooperative agreements. EPA will be providing information about this transition option to existing BCRLF grant recipients.
- The performance period for these grants generally will be five years.
- Refer to *Appendix 2, Prohibitions on Use of Funds*, for more information on activities that may not be funded using brownfields grant funds.

2.4. CLEANUP GRANT PROGRAM

Cleanup grants provide funding for a grant recipient to carry out cleanup activities at brownfield sites.

- An eligible entity may apply for up to \$200,000 per site. Due to budget limitations, no entity should apply for funding cleanup activities at more than five sites. These funds may be used to address sites contaminated by petroleum and hazardous substances, pollutants, or contaminants (including hazardous substances co-mingled with petroleum).
- Cleanup grants require a 20 percent cost share, which may be in the form of a contribution of money, labor, material, or services, and must be for eligible and allowable costs (the match must equal 20 percent of the amount of funding provided by EPA and cannot include administrative costs). A cleanup grant applicant may request a waiver of the 20 percent cost share requirement based on hardship. Applicants must contact their Regional representative (listed in *Appendix 1*) to discuss applying for a waiver prior to submitting Initial Proposals.

- An eligible entity must own the site for which it is requesting funding in order to qualify.
- The performance period for these grants generally will be two years.
- Refer to *Appendix 2, Prohibitions on Use of Funds*, for more information on activities that may not be funded using brownfields grant funds.

3. Proposal Submission and Selection Process Overview

The Brownfields Law provides that eligible entities may apply for grants through EPA Regional offices and that EPA establish a competitive system for awarding grants to the applicants with proposals that received the highest rankings. EPA brownfields grants will be selected on a competitive basis using a two-step proposal selection process. This section provides an overview of the two-step proposal submission and selection process and general requirements for proposal preparation.

3.1. STEP 1—INITIAL PROPOSALS

Step 1 is the submission, evaluation, and ranking of Initial Proposals through EPA Regional Offices. All eligible applicants, including those with existing brownfields grants awarded prior to January 11, 2002, may prepare Initial Proposals in response to these guidelines. These guidelines address three types of grant activities—assessment, revolving loan fund, and cleanup. All applicants, including those applying for more than one type of grant activity (assessment, revolving loan fund, and/or cleanup), must submit a **single** Initial Proposal.

There are two different types of criteria—**threshold criteria** and **ranking criteria**. Threshold and ranking criteria will be clearly indicated in each section below. If you are requesting funding for more than one type of grant activity, your Initial Proposals must include responses to each threshold criterion and ranking criterion for each grant activity type.

- In preparing Initial Proposals, applicants are encouraged to work with their EPA Regional Brownfields Contacts listed in *Appendix 1*. Regional representatives can help you understand applicant eligibility, site eligibility, activities that funding may and may not be used for, terminology, budgets, and other issues. ***Such assistance is available to all applicants upon request.***
- To submit an Initial Proposal, applicants must send an original Initial Proposal to their Regional representative and a copy to EPA Headquarters at the addresses shown in *Appendix 1*. Refer to *Section 4, Initial Proposal Guidelines*, for instructions on preparing Initial Proposals. Refer to *Appendix 1* for Regional and Headquarters contact mailing addresses. Initial Proposals must be postmarked or sent via registered or tracked mail to the appropriate Regional and Headquarters representative by ***November 27, 2002.***
- Initial Proposals will be evaluated and ranked by Regional evaluation panels. These panels will evaluate responses to threshold criteria on a pass/fail basis and will evaluate responses to ranking criteria on a numerical scoring basis. If a response to a **threshold criterion** fails, the proposal will be disqualified from further consideration under these guidelines. However, EPA Regions may seek clarification from an applicant regarding its response to certain threshold criteria. Scores on each **ranking criterion** will be totaled to determine proposal rankings.

- Funding requests for assessment, RLF, and cleanup grants will be evaluated separately and ranked independently for each type of grant funding activity.
- EPA will determine those Initial Proposals that have the highest rankings, and then invite those applicants to prepare and submit Final Proposals, the second step in the two-part proposal process. EPA decisions may take into account other statutory and policy considerations, such as urban and non-urban distribution and other geographic factors; the benefits of promoting the long-term availability of funds under the RLF grants; designation as a federal Empowerment Zone, Enterprise Community, or Renewal Community; population; and whether the applicant is a federally recognized Indian tribe. EPA will take information on relevant response or enforcement actions into account prior to making final decisions.
- Ineligible or lower ranking applicants will not be invited to prepare a Final Proposal. These applicants will be advised of this decision at the same time that invitations for Final Proposals will be sent to higher ranking applicants. EPA anticipates a highly competitive process. Depending on the number of Initial Proposals submitted and availability of funding, EPA expects to eliminate from competition a significant number of Initial Proposals.
- Applicants eliminated from competition at the Initial Proposal stage can contact their Regional Brownfields Contact for feedback on their proposals.

3.2. STEP 2–FINAL PROPOSALS

Step 2 is the submission, evaluation, and ranking of Final Proposals. Final Proposals will be accepted **by EPA invitation only**. Applicants should submit **separate** Final Proposals responding to these guidelines for each type of grant activity (assessment, revolving loan fund, and/or cleanup).

- To submit a Final Proposal, applicants must send an original Final Proposal to their Regional representative and a copy to EPA Headquarters at the addresses shown in *Appendix 1*. Refer to *Section 5, Final Proposal Guidelines*, for instructions on preparing Final Proposals. Refer to *Appendix 1* for Regional and Headquarters contact mailing addresses. Final Proposals must be postmarked or sent via registered or tracked mail to the appropriate Regional and Headquarters representative by **March 5, 2003**.
- Final Proposals will be evaluated and ranked by National Evaluation Panels composed of representatives from EPA Regional and Headquarters offices and representatives of other federal agencies. These panels will evaluate and rank responses to ranking criteria based on a numerical scoring system. Scores on all Final Proposal ranking criteria will be totaled and 20 percent of the total Initial Proposal scores will be added to determine Final Proposal rankings.

- Applicants eliminated from competition at the Final Proposal stage can contact their Regional Brownfields Contact for feedback on their proposals.
- EPA reserves the right to reject all proposals or applications and make no awards.

3.3. FINAL SELECTION AND FUNDING AWARD

Final selections will be made by EPA senior management based upon the evaluation and ranking of Final Proposals by the National Evaluation Panels. EPA decisions may take into account other statutory and policy considerations, such as urban and non-urban distribution and other geographic factors; the benefits of promoting the long-term availability of funds under the RLF grants; designation as a federal Empowerment Zone, Enterprise Community, or Renewal Community; population; and whether the applicant is a federally recognized Indian tribe. EPA also will take information on relevant response or enforcement actions into account prior to making final decisions. Successful proposal applicants will be informed in writing of their selection.

Funding will be awarded as a cooperative agreement. The applicants whose proposals are selected will be asked to submit a formal cooperative agreement application package to their EPA Regional office. This package will include an EPA-approved work plan, a final budget, and the required forms. Applicants will be required to submit progress reports in accordance with grant regulations found in 40 CFR 30.51 or 40 CFR 31.40, as applied by EPA Regional offices. EPA will work closely with the applicant to process and finalize the cooperative agreement package. EPA anticipates substantial involvement with the cooperative agreement recipient.

Any disputes regarding proposals or applications submitted in response to these guidelines will be resolved in accordance with 40 CFR 30.63 and Part 31, Subpart F.

In accordance with Executive Order 12372, EPA encourages applicants to contact their State Intergovernmental Review Office early so that the required intergovernmental review process may begin immediately upon selection by EPA. If the state does not have an Intergovernmental Review Office, the successful applicant must provide notice of the proposed agreement directly to affected state, area-wide, regional, and local entities. Contact your Regional Brownfields Contact for assistance, if needed.

3.4. PROPOSAL SUBMISSION SCHEDULE

EPA will adhere to the following schedule for the submission of grant proposals:

- | | |
|------------------------------|---------------------------------|
| • Initial Proposals | postmarked by November 27, 2002 |
| • Evaluation Results | mid-January |
| • Assessment Final Proposals | postmarked by March 5, 2003 |
| • RLF Final Proposals | postmarked by March 5, 2003 |
| • Cleanup Final Proposals | postmarked by March 5, 2003 |

3.5. GENERAL PROPOSAL REQUIREMENTS

All materials included in the proposal (including maps and other attachments) must be printed on **letter-sized paper** (8½" by 11") and font sizes may be no smaller than 12 points. Proposals received by EPA will be copied and distributed to appropriate reviewers; therefore, binders and color printing are discouraged. Generally, Initial Proposals should be between 7 and 10 pages in length, not including attachments. Generally, Final Proposals should be between 7 and 10 pages in length, not including attachments. Applicants should clearly mark information they consider confidential. EPA will make final confidentiality decisions in accordance with Agency regulations in 40 CFR Part 2, Subpart B.

Proposals should be concise and well organized, and must provide the information requested in the guidelines, including responses to each criterion. Factual information about your proposed project and community should be provided. Proposals should not include discussions of broad principles that are not specific to the proposed work or project. Responses to criteria should include the criteria number and title but need not restate the entire text of the criteria.

If you are applying for more than one type of grant activity, you may repeat responses when responding to similar criteria used in the guidelines for more than one type of grant activity. For example, you may wish to use the same description of “community need” in your responses to Initial Proposal ranking criteria for assessment, RLF, and cleanup grants. However, assessment, RLF, and cleanup proposals will be evaluated separately and different reviewers may review each grant program activity section. Each section of your proposal should stand on its own merits. Applicants are encouraged to discuss the links between grant proposals.

Electronic copies of the guidelines can be obtained from the EPA brownfields web site (www.epa.gov/brownfields) or by contacting your Regional Brownfields Contact listed in *Appendix 1*.

4. Initial Proposal Guidelines

To request funding, applicants must submit a single Initial Proposal. The Initial Proposal will be used to address up to three types of brownfields grant activities (assessment, RLF, and cleanup). Generally, Initial Proposals should be between 7 and 10 pages in length, not including attachments.

The Initial Proposal will consist of the following items:

- Cover Letter (optional)
- Applicant Information
- Requested Programs and Funding
- Project Overview
- Responses to Assessment Grant Criteria (if applicable)
 1. Threshold Criteria
 2. Ranking Criteria
- Responses to RLF Grant Criteria (if applicable)
 1. Threshold Criteria
 2. Ranking Criteria
- Responses to Cleanup Grant Criteria (if applicable)
 1. Threshold Criteria
 2. Ranking Criteria
- Attachments

4.1. PRELIMINARY INFORMATION

Please provide the following:

I. Cover Letter (Optional)

Submission of a cover letter is optional. If a cover letter is submitted, please prepare it on the applicant's letterhead and have it signed by an official of your organization.

II. Applicant Information

- A. Project Title: Be as specific as possible.
- B. Name of Applicant: The proposed recipient of the grant funds.

Note: For RLF coalition proposals, the entity named here will be considered the cooperative agreement recipient.

- C. Project contact: Name, mailing address, telephone and fax numbers, and email address of the person from your organization who is responsible for the project proposal. We will contact this person if we need further information.
- D. Chief Executive: Name of the elected official who represents the applicant (e.g., Mayor, County Executive, Tribal Chairperson, etc.), mailing address, and phone and fax numbers.

Note: For RLF coalition proposals, provide the information for the chief executive for each eligible entity.

- E. Location: City, county, and state or Indian Reservation, tribally-owned lands, tribal fee lands, etc., of the project area.

Note: For RLF coalition proposals, list the relevant information for each eligible entity.

- F. Population: The population of your jurisdiction and of your proposed project area. Tribes should provide the number of tribal/non-tribal members affected.

Note: For RLF coalition proposals, list the relevant information for each eligible entity.

- G. Special Consideration: Indicate whether you qualify for special consideration during proposal evaluation (i.e., population of your community under 100,000; federally recognized tribe; federally designated Empowerment Zone/Enterprise Community in your community; or federally designated Renewal Community).

III. Requested Programs and Funding (print/copy and complete and submit with proposal)

Name of Applicant: _____

Please respond as appropriate:

☐ Assessment Grant (check if applying for this grant activity type)☐ Requested funding for assessment of sites contaminated by hazardous substances, pollutants, or contaminants (including hazardous substances co-mingled with petroleum):

\$ _____ (no more than \$200,000 per applicant)

Are you requesting a waiver of the funding limit? _____

If yes, specify the amount requested:

\$ _____ (no more than \$150,000 per applicant)

☐ Requested funding for assessment of petroleum sites:

\$ _____ (no more than \$200,000 per applicant)

Are you requesting a waiver of the funding limit? _____

If yes, specify the amount requested:

\$ _____ (no more than \$150,000 per applicant)

Note: Only those proposals identifying specific sites will be eligible to apply for a waiver.

☐ Revolving Loan Fund Grant (check if applying for this grant activity type)

\$ _____ (total amount requested, up to \$1 million per eligible entity)

How much of this total is funding for addressing petroleum sites? \$ _____

Are you submitting this proposal on behalf of a coalition? _____

If yes, please indicate the number of eligible entities within the coalition: _____.

☐ Cleanup Grant (check if applying for this grant activity type)

\$ _____ (total amount requested, up to \$200,000 per site)

For each site, list the amount requested and whether it is for a hazardous substance, pollutant, or contaminant cleanup (including hazardous substances co-mingled with petroleum) or a petroleum cleanup. (You may apply for up to 5 sites.)

For example, Site 1: \$200,000 for a petroleum cleanup.

Site 1: \$ _____

Site 2: \$ _____

Site 3: \$ _____

Site 4: \$ _____

Site 5: \$ _____

IV. Project Overview

Describe your proposed project and your plans for using EPA grant funds, including assessment, cleanup, and revolving loan fund grants, as appropriate.

4.2. ASSESSMENT GRANTS

Provide responses to the following threshold and ranking criteria if you are applying for assessment grant funding. Threshold criteria are pass/fail criteria. If your responses do not meet the threshold criteria, you will not be invited to prepare Final Proposals.

THRESHOLD CRITERIA

A. **Applicant Eligibility**

Note: For this threshold criterion, EPA may seek further clarification of responses, if needed, during the selection review process.

Describe how you are an eligible entity for the grants for which you are applying. Refer to the description of applicant eligibility in *Section 2.1*.

B. **Community Notification**

Note: EPA will not seek further clarification of responses to this criterion.

Describe how the community was notified of the preparation and submission of this proposal.

Note: Those applicants selected to submit a Final Proposal will need to describe how the community was given the opportunity to be involved in the preparation of the Final Proposal.

C. **Letter from the State or Tribal Environmental Authority**

Note: EPA will not seek further clarification of responses to this criterion.

For an applicant other than a state or tribal environmental authority, provide a letter from the appropriate state or tribal environmental authority acknowledging that you plan to conduct assessment activities. If you are applying for multiple types of grant program activities, you need submit only one letter acknowledging the relevant grant activities. *Provide as an attachment.*

D. **Description of Sites/Site Selection Process**

Note: For this threshold criterion, EPA may seek further clarification of responses, if needed, during the selection review process.

1. If you have not yet identified specific sites, address the following:

- a. Describe how sites will be selected/site selection criteria will be developed;

- b. Describe possible inventory activities, prioritization efforts, or other activities;
 - c. If you anticipate conducting assessment activities on privately owned sites, discuss possible access issues and how you would resolve the issues.
2. If you have identified specific sites, address the following for each site:
- a. List the site name and address and describe its operational history, environmental concerns, and its current site use and activity.
 - b. If you determine the site is not eligible for funding without a property-specific determination, then you will need to apply for a property-specific determination. To apply, please refer to *Appendix 4*.

Note: EPA may use available information to verify that the site is eligible for funding.

- c. If the site is contaminated with petroleum, describe whether Leaking Underground Storage Tank (LUST) trust fund money has been spent at this site or whether the site is subject to a response under the Oil Pollution Act (see *Appendix 3*).
- d. Identify who owns the site.
- e. Identify how the site became contaminated.
- f. If the applicant owns the site, describe how you took ownership of the site (e.g., tax foreclosure) and date of acquisition.
- g. If the site is not owned by the applicant, describe your relationship with the owner and their role in the work to be performed.
- h. If the applicant owns the site, describe whether you are responsible for any of the environmental concerns at the site.
- i. For those sites that are not owned by the applicant, indicate how access will be secured.
- j. Indicate whether you are applying for a waiver of the \$200,000 per site funding limit. If so, indicate the dollar amount requested and provide a justification as to why the waiver should be granted. Justification must be based on the anticipated level of contamination, size, or status of ownership (refer to *Section 2.2* for a discussion of this waiver).

RANKING CRITERIA

- A. Community Need (a maximum of 40 points may be received for this criterion)
1. Provide a detailed description of the target community that the project(s) will benefit. Include demographic information and indicators such as the poverty rate, unemployment rate, special community situations (e.g., population size), or other environmental justice factors that support community need relating directly to this project (e.g., low-income and/or minority communities; sensitive populations, such as children and pregnant women; or communities disproportionately impacted by environmental factors).
 2. Characterize the impact of brownfields on your community (or communities) by describing the extent of brownfields (e.g., size, number, location) and the economic, health, and/or environmental impacts of the brownfields.
- B. Leveraging of Additional Resources (a maximum of 40 points may be received for this criterion)
1. Describe the financial needs for each phase of the project (assessment, cleanup, and redevelopment), if known.
 2. Identify the funds (e.g., general revenues, Tax Increment Financing (TIF), staff time/in-kind) that your agency/organization has committed or will commit to meet the needs described above.
 3. Describe all other funding sources (e.g., federal, state, nonprofit, or private) that will be committed to fill in any remaining funding gaps to ensure the success of this project.
 4. Describe the extent to which this grant will meet the financial needs described above and stimulate the availability of the other funding sources.
- C. Ability to Manage Grants (a maximum of 20 points may be received for this criterion)
1. Describe your ability to manage this grant and oversee the assessment work, or describe the system(s) you have in place to hire the requisite expertise.
 2. Describe your history of managing federal funds generally. You must identify and provide information regarding the status of any adverse audit findings from an OMB Circular A-133 audit, an audit conducted by a federal, state, tribal, or local government inspector general or similar organization, or audits conducted by the U.S. General Accounting Office. You also must note whether you are, or have previously been, required to comply with special “high risk” terms and conditions under agency regulations implementing OMB Circular A-102.
 3. If you are, or have been, a recipient of an EPA Brownfields Assessment cooperative agreement, provide information regarding your compliance with

quarterly progress reports, brownfields reporting measures, and annual financial status reporting.

4. If you are a current recipient of an EPA Brownfields Assessment cooperative agreement, indicate the amount of funds remaining.
5. If you are a current recipient of an EPA Brownfields Assessment cooperative agreement, highlight significant accomplishments generated through the use of the funds.

4.3. REVOLVING LOAN FUND GRANTS

Provide responses to the following threshold and ranking criteria if you are applying for Revolving Loan Fund grant funding. Threshold criteria are pass/fail criteria. If your responses do not meet the threshold criteria, you will not be invited to prepare Final Proposals.

THRESHOLD CRITERIA

A. **Applicant Eligibility**

Note: For this threshold criterion, EPA may seek further clarification of responses, if needed, during the selection review process.

Describe how you are an eligible entity for the grants for which you are applying. Refer to the description of applicant eligibility in *Section 2.1*.

Note: Coalition applicants for RLF grants must demonstrate that all coalition members are eligible entities. In addition, for coalition members other than the applicant, you must submit a letter from each eligible coalition member in which they agree to be part of the coalition.

B. **Community Notification**

Note: EPA will not seek further clarification of responses to this criterion.

Describe how the community was notified of the preparation and submission of this proposal.

Note: Those applicants selected to submit a Final Proposal will need to describe how the community was given the opportunity to be involved in the preparation of the Final Proposal.

C. **Legal Authority to Manage a Revolving Loan Fund**

Note: EPA will not seek further clarification of responses to this criterion.

Provide an opinion from your legal counsel that demonstrates your legal authority to perform the actions necessary to manage a revolving loan fund. At a minimum, legal authority must include the ability to hold funds, make loans, enter into loan agreements, and collect repayments. This authority may be based on statute, regulation, or other authority. *Attach your counsel's legal opinion.*

D. Cleanup Authority and Management Structure

Note: EPA will not seek further clarification of responses to this criterion.

1. Describe how you will oversee the cleanup at the site. Provide a description of the technical expertise you have to manage the cleanup and a description of any additional expertise that will be acquired. If you plan to obtain additional technical expertise, discuss how, consistent with 40 CFR 31.36, you will ensure that this expertise is in place prior to beginning cleanup activities.
2. Provide a legal opinion from your counsel that demonstrates that you have legal authority to access and secure sites in the event of an emergency or default of a loan agreement or non-performance under a subgrant. *Attach your counsel's legal opinion.*

E. Cost Share

Note: EPA will not seek further clarification of responses to this criterion.

RLF grant recipients are required by the new Brownfields Law to provide a 20 percent cost share.² This cost share is calculated as 20 percent of the total federal RLF funds awarded. For example, if you are applying for \$1 million of federal RLF funds, you must provide a cost share of an additional \$200,000. The cost share may be in the form of a contribution of money, labor, material, or services from a non-federal source. If the cost share is in the form of contribution of labor, material, or other services, it must be for an **eligible and allowable expense** under the grant and not for ineligible expenses, such as administrative costs (see *Appendix 2* for a discussion of prohibited costs).

1. Describe your plans for providing the cost share as required for this RLF program grant.

RLF grant applicants may petition EPA to waive the cost-share requirement if it would place an undue hardship on the eligible entity. EPA will consider hardship waiver requests on a case-by-case basis and will approve such requests on a limited basis. Undue hardship may be defined as bankruptcy or such other indicator of distress, including low per-capita income, unemployment rate above national average, or unemployment or economic adjustment problems resulting from severe short-term or long-term changes in economic conditions. Applicants should contact their regional representative (see *Appendix 1*) to discuss applying for a hardship waiver prior to submitting their Initial Proposal.

²Applicants for an RLF grant may use fees from borrowers, interest on loans, repayments of loan principal, and other “program income” to meet the cost share requirement. However, if an RLF grant applicant plans to use anticipated program income for cost share, the applicant also must demonstrate how alternative sources for obtaining money, labor, material, or services can be used to meet its cost share requirement if program income is less than anticipated during the performance period for the grant.

2. If you are requesting a hardship waiver of the cost share, provide an explanation for the basis of your request as part of your proposal.

F. Letter from the State or Tribal Environmental Authority

Note: EPA will not seek further clarification of responses to this criterion.

For an applicant other than a state or tribal environmental authority, provide a letter from the appropriate state or tribal environmental authority acknowledging that the applicant plans to conduct or oversee cleanup activities. If you are applying for multiple types of grant program activities, you need only submit one letter acknowledging the relevant grant activities. *Provide as an attachment.*

RANKING CRITERIA

A. Community Need (a maximum of 40 points may be received for this criterion)

1. Provide a detailed description of the target community that the project(s) will benefit. Include demographic information and indicators, such as the poverty rate, unemployment rate, special community situations (e.g., population size), or other environmental justice factors that support community need relating directly to this project (e.g., low-income and/or minority communities; sensitive populations, such as children and pregnant women; or communities disproportionately impacted by environmental factors).
2. Characterize the impact of brownfields on your community (or communities) by describing the extent of brownfields (e.g., size, number, location) and the economic, health, and/or environmental impacts of the brownfields.

B. Leveraging of Additional Resources (a maximum of 40 points may be received for this criterion)

1. Describe the financial needs for each phase of the project (cleanup and redevelopment), if known.
2. Identify the funds (e.g., general revenues, TIF, staff time/in-kind) that your agency/organization has committed or will commit to meet the needs described above.
3. Describe all other funding sources (federal, state, nonprofit, or private) that will be committed to fill in any remaining funding gaps to ensure the success of this project.
4. Describe the extent to which this grant will meet the financial needs described above and stimulate the availability of the other funding sources.

- C. Ability to Manage Grants/Management Structure (a maximum of 20 points may be received for this criterion)
1. Describe your history of managing federal funds generally. You must identify and provide information regarding the status of any adverse audit findings from an OMB Circular A-133 audit, an audit conducted by a federal, state, tribal, or local government inspector general or similar organization, or audits conducted by the U.S. General Accounting Office. You also must note whether you are, or have previously been, required to comply with special “high risk” terms and conditions under agency regulations implementing OMB Circular A-102.
 2. Provide your plan for managing the loan fund to ensure that it is managed in accordance with prudent lending practices. Include information on the qualifications of staff and institutions the applicant intends to use for financial, analytical, legal, and record keeping activities to ensure that the loan fund is managed in accordance with prudent lending practices.
 3. If you plan to acquire any fund management expertise, describe the relationship between the potential cooperative agreement recipient and the institution or individual and the type of agreement (e.g., contract³ or subgrant⁴) that is planned.
- D. Description of Target Market for RLF Loans and Subgrants (a maximum of 40 points may be received for this criterion)
1. If you have not identified particular borrowers or subgrantees, describe your target market, including the types of borrowers and subgrantees (for example, small businesses, developers, local governments) and types of sites (for example, single property, multiple properties, geographic area).
 2. If you are identifying particular sites, address the following for each site:
 - a. Identify the proposed borrower or subgrantee. Include the organizational name and address.
 - b. List the site name and address and describe its operational history, environmental concerns, and its current site use and activity.

³Note, cooperative agreement recipients must comply with 40 CFR 31.36 when entering into procurement contracts with RLF grant funds and 40 CFR 31.37 when issuing subgrants with RLF grant funds. Nonprofit organizations receiving RLF loans/subgrants and cleanup grants must comply with 40 CFR Part 30 when entering into procurement contracts with RLF grant funds.

⁴Note, cooperative agreement recipients cannot award subgrants to for-profit organizations.

- c. If you determine the site is not eligible for funding without a property-specific determination, then you will need to apply for a property-specific determination. To apply, please refer to *Appendix 4*.

Note: EPA may use available information to verify that the site is eligible for funding.

- d. If the site is contaminated with petroleum, describe whether LUST trust fund money has been spent at this site or whether the site is subject to a response under the Oil Pollution Act (see *Appendix 3*).

- e. Identify who owns the site.

Note: For subgrants, the subgrantee must own the site.

- f. Identify how the site became contaminated.

- g. If the borrower or subgrantee owns the site, describe how they took ownership of the site (e.g., tax foreclosure) and the date of acquisition.

- h. If the applicant owns the site, describe whether you are responsible for any of the environmental concerns at the site.

Note: An applicant may loan RLF grant funds to itself but may not issue subgrants of RLF grant funds to itself.

- 3. If you plan to award subgrants under the RLF, describe how you will take the following into consideration⁵:

- a. The extent to which the subgrant will facilitate the creation of, preservation of, or addition to a park, greenway, undeveloped property, recreational property, or other property used for nonprofit purposes;
- b. The extent to which the subgrant will meet the needs of a community that has an inability to draw on other sources of funding for environmental remediation and subsequent redevelopment of the area in which a brownfield site is located because of the small population or low income of the community;
- c. The extent to which a subgrant will facilitate the use or reuse of existing infrastructure; and
- d. The benefit of promoting the long-term availability of funds from a revolving loan fund for brownfield remediation.

⁵RLF cooperative agreement recipients must take these into consideration when awarding a subgrant.

4.4. CLEANUP GRANTS

Provide responses to the following threshold and ranking criteria if you are applying for cleanup grant funding. Threshold criteria are pass/fail criteria. If your responses do not meet the threshold criteria, you will not be invited to prepare Final Proposals.

Note: One eligible entity may apply for up to 5 sites, at up to \$200,000 per site.

THRESHOLD CRITERIA

A. Applicant Eligibility

Note: For this threshold criterion, EPA may seek further clarification of responses, if needed, during the selection review process.

Describe how you are an eligible entity for the grants for which you are applying. Refer to the description of applicant eligibility in *Section 2.1*.

*Note: In order to receive a cleanup grant, the applicant **must own** the property for which they are applying.*

B. Community Notification

Note: EPA will not seek further clarification of responses to this criterion.

Describe how the community was notified of the preparation and submission of this proposal.

Note: Those applicants selected to submit a Final Proposal will need to describe how the community was given the opportunity to be involved in the preparation of the Final Proposal.

C. Description of Sites

Note: For this threshold criterion, EPA may seek further clarification of responses, if needed, during the selection review process.

For each site, provide the following:

1. List the site name and address and describe its operational history, environmental concerns, and its current site use and activity.
2. If you determine the site is not eligible for funding without a property-specific determination, then you will need to apply for a property-specific determination. To apply, please refer to *Appendix 4*.

Note: EPA may use available information to verify that the site is eligible for funding.

3. If the site is contaminated with petroleum, describe whether LUST trust fund money has been spent at this site or whether the site is subject to a response under the Oil Pollution Act (see *Appendix 3*).
4. Identify how the site became contaminated.
5. Describe how you took ownership of the site (e.g., tax foreclosure) and date of acquisition.

Note: applicants will be required to supply documentation reflecting ownership of the property before the final award is made.

6. Describe whether you are responsible for any of the environmental concerns at the site.
7. Summarize the site assessment results.
8. Describe your approach for working with your state voluntary cleanup program or other relevant response program, if appropriate.

D. Cleanup Authority and Management Structure

Note: EPA will not seek further clarification of responses to this criterion.

1. Describe how you will oversee the cleanup at the site. Provide a description of the technical expertise you have to manage the cleanup and a description of any additional expertise that will be acquired. If you plan to obtain additional technical expertise, discuss how, consistent with 40 CFR 31.36, you will ensure that this expertise is in place prior to beginning cleanup activities.
2. Cleanup response activities often impact adjacent or neighboring properties. For example, access to neighboring properties may be necessary to conduct the cleanup, perform confirmation sampling, or monitor offsite migration of contamination. If this type of access is needed, provide your plan to acquire access to the relevant property.

E. Cost Share

Note: EPA will not seek further clarification of responses to this criterion.

Cleanup grant recipients are required by the new Brownfields Law to provide a 20 percent cost share.⁶ This cost share is calculated as 20 percent of the total federal cleanup funds awarded. For example, if you are applying for \$1 million of federal cleanup funds, you must provide a cost share of an additional \$200,000. The cost share may be in the form of a contribution of money, labor, material, or services from a non-federal source. If the cost share is in the form of contribution of labor, material, or other services, it must be for an **eligible and allowable expense** under the grant and not for ineligible expenses, such as administrative costs (see *Appendix 2* for a discussion of prohibited costs).

1. Describe your plans for providing the cost share as required for this cleanup program grant.

Cleanup grant applicants may petition EPA to waive the cost share requirement if it would place an undue hardship on the eligible entity. EPA will consider hardship waiver requests on a case-by-case basis and will approve such requests on a limited basis. Undue hardship may be defined as bankruptcy or such other indicator of distress, including low per-capita income, unemployment rate above national average, or unemployment or economic adjustment problems resulting from severe short-term or long-term changes in economic conditions. Applicants should contact their regional representative to discuss applying for a hardship waiver prior to submitting their Initial Proposal.

2. If you are requesting a hardship waiver of the cost share, provide an explanation for the basis of your request as part of your proposal.

F. Letter from the State or Tribal Environmental Authority

Note: EPA will not seek further clarification of responses to this criterion.

For an applicant other than a state or tribal environmental authority, provide a letter from the appropriate state or tribal environmental authority acknowledging that the applicant plans to conduct cleanup activities. If you are applying for multiple grant programs, you need only submit one letter acknowledging the relevant grant activities. *Provide as an attachment.*

⁶Applicants for a cleanup grant may use fees from borrowers, interest on loans, repayments of loan principal, and other “program income” to meet the cost share requirement. However, if a cleanup grant applicant plans to use anticipated program income for cost share, the applicant also must demonstrate how alternative sources for obtaining money, labor, material, or services can be used to meet its cost share requirement if program income is less than anticipated during the performance period for the grant.

RANKING CRITERIA

- A. Community Need (a maximum of 40 points may be received for this criterion)
1. Provide a detailed description of the target community that the project(s) will benefit. Include demographic information and indicators such as the poverty rate, unemployment rate, special community situations (e.g., population size), or other environmental justice factors that support community need relating directly to this project (e.g., low-income and/or minority communities; sensitive populations, such as children and pregnant women; or communities disproportionately impacted by environmental factors).
 2. Characterize the impact of brownfields on your community (or communities) by describing the extent of brownfields (e.g., size, number, location) and the economic, health, and/or environmental impacts of the brownfields.
- B. Leveraging of Additional Resources (a maximum of 40 points may be received for this criterion)
1. Describe the financial needs for each phase of the project (cleanup and redevelopment), if known.
 2. Identify the funds (e.g., general revenues, TIF, staff time/in-kind) that your agency/organization has committed or will commit to meet the needs described above.
 3. Describe all other funding sources (federal, state, nonprofit, or private) that will be committed to fill in any remaining funding gaps to ensure the success of this project.
 4. Describe the extent to which this grant will meet the financial needs described above and stimulate the availability of the other funding sources.
- C. Ability to Manage Grants (a maximum of 20 points may be received for this criterion)
1. Describe your ability to manage this grant or describe the system(s) you have in place to hire the requisite expertise.
 2. Describe your history of managing federal funds generally. You must identify and provide information regarding the status of any adverse audit findings from an OMB Circular A-133 audit, an audit conducted by a federal, state, tribal, or local government inspector general or similar organization, or audits conducted by the U.S. General Accounting Office. You also must note whether you are, or have previously been, required to comply with special “high risk” terms and conditions under agency regulations implementing OMB Circular A-102.

STOP

This is the end of the Initial Proposal

Applicants will be notified if and when to
complete the Final Proposal

When EPA invites applicants to submit Final Proposals, EPA may provide additional information about Final Proposal guidelines.

5. Final Proposal Guidelines

Final Proposals will be requested at the invitation of EPA, after review of Initial Proposals.

An invitation to submit a Final Proposal for one grant program is not indicative of an invitation to submit a proposal for all grant programs.

Applicants must submit ***separate proposals for each grant program*** for which they receive an invitation. Applicants should not resubmit their Initial Proposals. Generally, Final Proposals should be between 7 and 10 pages in length, not including attachments. Final Proposal attachments should be kept to a minimum. You should not resubmit attachments provided in the Initial Proposal. EPA will not review or evaluate attachments such as strategies or plans developed for other programs, newspaper articles, and videotapes. Information in these types of attachments should be distilled and incorporated into the responses to criteria.

The final proposal for each type of grant funding should consist of the following:

- Cover Letter (optional)
- Proposal Title and Name of Applicant
- Budget
- Responses to Ranking Criteria
- Attachments (if applicable)

5.1. ASSESSMENT GRANTS

Assessment Grant Proposal Budget (a maximum of 15 points may be received for this criterion)

Provide the proposed budget(s) for your proposal. ***Note that you must provide separate budgets for funds intended for use on petroleum-contaminated sites and funds intended for use on sites contaminated by hazardous substances, pollutants, or contaminants (including hazardous substances co-mingled with petroleum).*** The budgets should show the distribution of funds, including cost estimates for each of the proposed activities.

A local government may use up to 10 percent of its grant funds for monitoring the health of populations exposed to one or more hazardous substances, pollutants, or contaminants from a brownfield site and monitoring and enforcement of any institutional control used to prevent human exposure to any hazardous substance, pollutant, or contaminant from a brownfield site. To effectively oversee assessments and cleanups, local governments may use grant funds (subject to the 10 percent limit) for other related program development and implementation activities.

Typical tasks might include “Phase I Assessments,” “Community Outreach,” and “Cleanup Planning.” Provide footnotes to the budget table describing each task.

Sample Format for Budget Description

	Project Tasks				
Budget Categories	Task 1	Task 2	Task 3	Task 4	Total
Personnel (programmatic costs only)					
Travel					
Equipment ¹					
Supplies					
Contractual ²					
Other (specify)					
Total					

¹ EPA defines equipment as items that cost \$5,000 or more with a useful life of more than one year. Items costing less than \$5,000 are considered supplies.

² Applicants must comply with the procurement procedures contained in 40 CFR 31.36, or for nonprofits, with 40 CFR 30.40.

ASSESSMENT GRANT CRITERIA

Provide responses to the following assessment ranking criteria:

Note: Many of the criteria are common to all three types of grants. Applicants may copy responses to common criteria and provide these responses in the appropriate place for each type of grant requested. Final proposals will be submitted separately for each type of grant and will be reviewed independently, so each proposal must stand on its own merits.

- A. Sustainable Reuse of Brownfields/Development Potential (a maximum of 15 points may be received for this criterion)
1. Describe your vision for promoting sustainable reuse of brownfields and preventing the creation of future brownfields. Describe how you will implement this vision and how it will protect and restore the quality of the natural environment, improve the quality of life for the community, broaden prospects for future generations, and help reduce resource consumption.
 2. Describe the redevelopment plans for the sites or targeted areas, and how those plans fit into your community's master plan, economic development plan, or economic development activities.
 3. Describe how this project will stimulate economic development, including the creation of jobs, capital investment, and increases to the local tax base.
- B. Reduction of Threats to Human Health and the Environment (a maximum of 20 points may be received for this criterion)
1. Describe how the funds will be used to address/facilitate the identification and/or reduction of threats to human health and the environment within the target area (including cancer, asthma, or birth defects) that may be associated with exposure to hazardous substances, pollutants, contaminants, or petroleum.
 2. Describe how, by conducting the activities mentioned in B.1. above, your actions could affect the environment. If your actions could affect the environment, describe the alternatives you would use to mitigate the environmental impacts of your actions.
 3. Describe sensitive populations (e.g., children, pregnant women, minority or low-income communities, etc.) in the community surrounding the target area or site(s) and how you derived this information.
 4. Describe how the funds provided by this grant will be used to address/facilitate the identification and/or reduction of threats to the health and welfare of these sensitive populations.
 5. Describe whether you are working with your local public health department to ensure that public health issues are considered during the redevelopment process.

- C. Reuse of Existing Infrastructure (a maximum of 15 points may be received for this criterion)
1. Describe whether the project will use existing infrastructure (e.g., public transportation, utilities, buildings) or require its expansion.
 2. Describe whether the project will encourage the development or redevelopment of properties with existing infrastructure and describe the infrastructure that may be reused.
- D. Greenspace/Open Space (a maximum of 15 points may be received for this criterion)
1. Describe the extent to which a grant would facilitate the creation, preservation, or addition to a park, greenway, undeveloped property, recreational property, or other property used for nonprofit purposes.
 2. Explain how this project integrates other efforts to improve/redevelop brownfields, including ongoing project(s) proposed under this grant.
- E. Community Involvement (a maximum of 20 points may be received for this criterion)
1. Describe how you involved the local community in the development of this proposal. Provide a list of the community-based organizations involved and a contact person, phone number, and a brief description of the organization's activities and representation (these organizations may include, but are not limited to, local citizen groups, environmental organizations, civic organizations, local business groups and institutions, educational institutions, and local labor organizations).
- Note: EPA may conduct reference checks to ensure that organizations identified are supportive and involved with the brownfields project.*
2. Describe your efforts and/or plans to develop partnerships at the local, state, and/or tribal level with other stakeholders to ensure appropriate and sustainable cleanup and redevelopment of brownfields.
 3. Discuss your plan for involving the local community (e.g., neighborhood organizations, citizens' groups, borrowers, redevelopers, and other stakeholders) in cleanup decisions or reuse planning.
 4. Describe the means by which you will communicate the progress of your project to citizens, including plans for communicating in languages indigenous to the community.

5.2. REVOLVING LOAN FUND GRANTS

RLF Grant Proposal Budget (a maximum of 15 points may be received for this criterion)

Provide the proposed budget(s) for your proposal. It must reflect your cost share. ***Note that you must provide separate budgets for funds intended for use on petroleum-contaminated sites and funds intended for use on sites contaminated by hazardous substances, pollutants, or contaminants (including hazardous substances co-mingled with petroleum).*** The budget(s) should show the distribution of funds, including cost estimates for each of the proposed activities.

A local government may use up to 10 percent of its grant funds for monitoring the health of populations exposed to one or more hazardous substances, pollutants, or contaminants from a brownfield site and monitoring and enforcement of any institutional control used to prevent human exposure to any hazardous substance, pollutant, or contaminant from a brownfield site. To effectively oversee assessments and cleanups, local governments may use grant funds (subject to the 10 percent limit) for other related program development and implementation activities.

Typical tasks would include “Establishing the Revolving Fund,” “Marketing the Revolving Fund,” “Operating the Revolving Fund,” “Cleanup Planning,” and “Overseeing Site Cleanup.” Provide footnotes to the budget table describing each task.

Sample Format for Budget Description

	Project Tasks for Loans (at least 60 percent of amount requested)				
Budget Categories	Task 1	Task 2	Task 3	Task 4	Total
Personnel (programmatic costs only)					
Travel					
Equipment ¹					
Supplies					
Contractual ²					
Other (specify)					
Subtotal:					

	Project Tasks for Subgrants (no more than 40 percent of amount requested)				
Budget Categories	Task 1	Task 2	Task 3	Task 4	Total
Personnel (programmatic costs only)					
Travel					
Equipment ¹					
Supplies					
Contractual ²					
Other					
Subtotal:					
Total					
Cost share	(20 percent of total RLF federal funding award)				

¹ EPA defines equipment as items that cost \$5,000 or more with a useful life of more than one year. Items costing less than \$5,000 are considered supplies.

² Applicants must comply with the procurement procedures contained in 40 CFR 31.36, or for nonprofits, with 40 CFR 30.40.

REVOLVING LOAN FUND GRANT CRITERIA

Provide responses to the following Revolving Loan Fund ranking criteria:

Note: Many of the criteria are common to all three types of grants. Applicants may copy responses to common criteria and provide these responses in the appropriate place for each type of grant requested. Final proposals will be submitted separately for each type of grant and will be reviewed independently, so each proposal must stand on its own merits.

A. Business Plan (a maximum of 20 points may be received for this criterion)

1. Describe your anticipated loan structure (amount, interest, time frame for repayment).
2. Describe your advertising plan and any other redevelopment incentives (for example, TIFs, tax incentives, tax credits, state funding programs) that may be offered as part of a package to assist with promoting the RLF program.
3. Describe how your proposal will promote the long-term availability of funds from a revolving loan fund. If you are planning to provide cleanup subgrants using

your RLF grant, describe how this will affect the long-term availability of your revolving loan fund.

4. Describe how you will make full and effective use of the RLF within the grant period. Include in your discussion an implementation schedule and time line for your use of the RLF funds.

B. Sustainable Reuse of Brownfields/Development Potential (a maximum of 15 points may be received for this criterion)

1. Describe your vision for promoting sustainable reuse of brownfields and preventing the creation of future brownfields. Describe how you will implement this vision and how it will protect and restore the quality of the natural environment, improve the quality of life for the community, broaden prospects for future generations, and help reduce resource consumption.
2. Describe the redevelopment plans for the sites or targeted areas, and how those plans fit into your community's master plan, economic development plan, or economic development activities.
3. Describe how this project will stimulate economic development, including the creation of jobs, capital investment, and increases to the local tax base.

C. Reduction of Threats to Human Health and the Environment (a maximum of 20 points may be received for this criterion)

1. Describe how the funds will be used to address/facilitate the identification and/or reduction of threats to human health and the environment within the target area (including cancer, asthma, or birth defects) that may be associated with exposure to hazardous substances, pollutants, contaminants, or petroleum.
2. Describe how, by conducting the activities mentioned in C.1. above, your actions could affect the environment. If your actions could affect the environment, describe the alternatives you would use to mitigate the environmental impacts of your actions.
3. Describe sensitive populations (e.g., children, pregnant women, minority or low-income communities, etc.) in the community surrounding the target area or site(s) and how you derived this information.
4. Describe how the funds provided by this grant will be used to address/facilitate the identification and/or reduction of threats to the health and welfare of these sensitive populations.
5. Describe whether you are working with your local public health department to ensure that public health issues are considered during the redevelopment process.

- D. Reuse of Existing Infrastructure (a maximum of 15 points may be received for this criterion)
1. Describe whether the project will use existing infrastructure (e.g., public transportation, utilities, buildings) or require its expansion.
 2. Describe whether the project will encourage the development or redevelopment of properties with existing infrastructure and describe the infrastructure that may be reused.
- E. Greenspace/Open Space (a maximum of 15 points may be received for this criterion)
1. Describe the extent to which a grant would facilitate the creation, preservation, or addition to a park, greenway, undeveloped property, recreational property, or other property used for nonprofit purposes.
 2. Explain how this project integrates other efforts to improve/redevelop brownfields, including ongoing project(s) proposed under this grant.
- F. Community Involvement (a maximum of 20 points may be received for this criterion)
1. Describe how you involved the local community in the development of this proposal. Provide a list of the community-based organizations involved and a contact person, phone number, and a brief description of the organization's activities and representation (these organizations may include, but are not limited to, local citizen groups, environmental organizations, civic organizations, local business groups and institutions, education institutions, and local labor organizations).
- Note: EPA may conduct reference checks to ensure that organizations identified are supportive and involved with the brownfields project.*
2. Describe your efforts and/or plans to develop partnerships at the local, state, and/or tribal level with other stakeholders to ensure appropriate and sustainable cleanup and redevelopment of brownfields.
 3. Discuss your plan for involving the local community (e.g., neighborhood organizations, citizens' groups, borrowers, redevelopers, and other stakeholders) in cleanup decisions or reuse planning.
 4. Describe the means by which you will communicate the progress of your project to citizens, including plans for communicating in languages indigenous to the community.

5.3. CLEANUP GRANTS

Cleanup Grant Budget (a maximum of 15 points may be received for this criterion)

Provide the proposed budget(s) for your proposal. It must reflect your cost share. ***Note that you must provide separate budgets for funds intended for use on petroleum-contaminated sites and funds intended for use on sites contaminated by hazardous substances, pollutants, or contaminants (including hazardous substances co-mingled with petroleum).*** The budget(s) should show the distribution of funds, including cost estimates for each of the proposed activities

A local government may use up to 10 percent of its grant funds for monitoring the health of populations exposed to one or more hazardous substances, pollutants, or contaminants from a brownfield site and monitoring and enforcement of any institutional control used to prevent human exposure to any hazardous substance, pollutant, or contaminant from a brownfield site. To effectively oversee assessments and cleanups, local governments may use grant funds (subject to the 10 percent limit) for other related program development and implementation activities.

Typical tasks would include “Site Cleanup” and “Cleanup Planning.” Provide footnotes to the budget table describing each task.

Sample Format for Budget Description

	Project Tasks				
Budget Categories	Task 1	Task 2	Task 3	Task 4	Total
Personnel (programmatic costs only)					
Travel					
Equipment ¹					
Supplies					
Contractual ²					
Other (specify)					
Total					
Cost Share	(20 percent of total Cleanup Award)				

¹ EPA defines equipment as items that cost \$5,000 or more with a useful life of more than one year. Items costing less than \$5,000 are considered supplies.

² Applicants must comply with the procurement procedures contained in 40 CFR 31.36, or for nonprofits, with 40 CFR 30.40.

CLEANUP GRANT CRITERIA

Provide responses to the following cleanup grant ranking criteria:

Note: Many of the criteria are common to all three types of grants. Applicants may copy responses to common criteria and provide these responses in the appropriate place for each type of grant requested. Final proposals will be submitted separately for each type of grant and will be reviewed independently, so each proposal must stand on its own merits.

- A. Sustainable Reuse of Brownfields/Development Potential (a maximum of 15 points may be received for this criterion)
1. Describe your vision for promoting sustainable reuse of brownfields and preventing the creation of future brownfields. Describe how you will implement this vision and how it will protect and restore the quality of the natural environment, improve the quality of life for the community, broaden prospects for future generations, and help reduce resource consumption.
 2. Describe the redevelopment plans for the sites or targeted areas, and how those plans fit into your community's master plan, economic development plan, or economic development activities.
 3. Describe how this project will stimulate economic development, including the creation of jobs, capital investment, and increases to the local tax base.
- B. Reduction of Threats to Human Health and the Environment (a maximum of 20 points may be received for this criterion)
1. Describe how the funds will be used to address/facilitate the identification and/or reduction of threats to human health and the environment within the target area (including cancer, asthma, or birth defects) that may be associated with exposure to hazardous substances, pollutants, contaminants, or petroleum.
 2. Describe how, by conducting the activities mentioned in B.1. above, your actions could affect the environment. If your actions could affect the environment, describe the alternatives you would use to mitigate the environmental impacts of your actions.
 3. Describe sensitive populations (e.g., children, pregnant women, minority or low-income communities, etc.) in the community surrounding the target area or site(s) and how you derived this information.
 4. Describe how the funds provided by this grant will be used to address/facilitate the identification and/or reduction of threats to the health and welfare of these sensitive populations.
 5. Describe whether you are working with your local public health department to ensure that public health issues are considered during the redevelopment process.

- C. Reuse of Existing Infrastructure (a maximum of 15 points may be received for this criterion)
1. Describe whether the project will use existing infrastructure (e.g., public transportation, utilities, buildings) or require its expansion.
 2. Describe whether the project will encourage the development or redevelopment of properties with existing infrastructure and describe the infrastructure that may be reused.
- D. Greenspace/Open Space (a maximum of 15 points may be received for this criterion)
1. Describe the extent to which a grant would facilitate the creation, preservation, or addition to a park, greenway, undeveloped property, recreational property, or other property used for nonprofit purposes.
 2. Explain how this project integrates other efforts to improve/redevelop brownfields, including ongoing project(s) proposed under this grant.
- E. Community Involvement (a maximum of 20 points may be received for this criterion)
1. Describe how you involved the local community in the development of this proposal. Provide a list of the community-based organizations involved and a contact person, phone number, and a brief description of the organization's activities and representation (these organizations may include, but are not limited to, local citizen groups, environmental organizations, civic organizations, local business groups and institutions, education institutions, and local labor organizations).
- Note: EPA may conduct reference checks to ensure that organizations identified are supportive and involved with the brownfields project.*
2. Describe your efforts and/or plans to develop partnerships at the local, state, and/or tribal level with other stakeholders to ensure appropriate and sustainable cleanup and redevelopment of brownfields.
 3. Discuss your plan for involving the local community (e.g., neighborhood organizations, citizens' groups, borrowers, redevelopers, and other stakeholders) in cleanup decisions or reuse planning.
 4. Describe the means by which you will communicate the progress of your project to citizens, including plans for communicating in languages indigenous to the community.

Appendix 1. EPA Regional and Headquarters Contacts

Regions and States		Address and Phone Number
EPA Region 1 Lynne Jennings	CT, ME, MA, NH, RI, VT	One Congress Street, Suite 1100 (Mailcode H10) Boston, MA 02114-2023 Phone (617) 918-1210 Fax (617) 918-1291 jennings.lynne@epa.gov
EPA Region 2 Larry D'Andrea	NJ, NY, PR, VI	290 Broadway, 18th Floor New York, NY 10007 Phone (212) 637-4314 Fax (212) 637-4360 dandrea.larry@epa.gov
EPA Region 3 Tom Stolle	DE, DC, MD, PA, VA, WV	1650 Arch Street (3HS34) Philadelphia, PA 19103-2029 Phone (215) 814-3129 Fax (215) 814-5518 stolle.tom@epa.gov
EPA Region 4 Mickey Hartnett	AL, FL, GA, KY, MS, NC, SC, TN	Atlanta Federal Center 61 Forsyth Street Atlanta, GA 30303 Phone (404) 562-8661 Fax (404) 562-8628 hartnett.mickey@epa.gov
EPA Region 5 Deborah Orr	IL, IN, MI, MN, OH, WI	77 West Jackson Boulevard (SE-4J) Chicago, IL 60604-3507 Phone (312) 886-7576 Fax (312) 886- 6741 orr.deborah@epa.gov
EPA Region 6 Stan Hitt	AR, LA, NM, OK, TX	1445 Ross Avenue, Suite 1200 (6SF-PB) Dallas, TX 75202-2733 Phone (214) 665-6736 Fax (214) 665-6660 hitt.stan@epa.gov
EPA Region 7 Susan Klein	IA, KS, MO, NE	901 N. 5th Street Kansas City, KS 66101 Phone (913) 551-7786 Fax (913) 551-8688 klein.susan@epa.gov
EPA Region 8 Kathie Atencio	CO, MT, ND, SD, UT, WY	999 18th Street, Suite 300 (EPR) Denver, CO 80202- 2466 Phone (303) 312-6803 Fax (303) 312-6067 atencio.kathie@epa.gov
EPA Region 9 Jim Hanson	AZ, CA, HI, NV, AS, GU	75 Hawthorne Street, SFD 1-1 San Francisco, CA 94105 Phone (415) 972-3188 Fax (415) 947-3528 hanson.jim@epa.gov
EPA Region 10 Tim Brincefield	AK, ID, OR, WA	1200 Sixth Avenue (ECL-112) Seattle, WA 98101 Phone (206) 553-2100 Fax (206) 553-0124 brincefield.timothy@epa.gov

Regions and States		Address and Phone Number
EPA Headquarters Myra Blakely		U.S. Postal Service mailing address: 1200 Pennsylvania Avenue, NW, MC 5105(T) Washington, DC 20005 Overnight Delivery mailing address: EPA West Building 1301 Constitution Avenue, Room 2402 Washington, DC 20460 Phone (202) 566-2777 Fax (202) 566-2757 blakely.myra@epa.gov

Appendix 2. Prohibitions on Use of Funds

Grant funds may not be used for the payment of:

- A penalty or fine.
- A federal cost-share requirement (for example, a cost share required by other federal funds).
- An administrative cost (see below).
- A response cost at a brownfield site for which the recipient of the grant or loan is potentially liable under CERCLA §107.
- A cost of compliance with any federal law, excluding the cost of compliance with laws applicable to the cleanup.
- Unallowable costs (e.g. lobbying and fund raising) under OMB Circulars A-21, A-87, or A-122, as applicable.

Administrative Cost Prohibition

The Brownfields Law prohibits the use of any “part of a grant or loan” for the payment of an administrative cost. In implementing this prohibition, EPA has made a distinction between prohibited administrative costs and eligible programmatic costs.

- A. **Administrative Costs.** Prohibited administrative costs are direct costs, including those in the form of salaries, benefits, contractual costs, supplies, and data processing charges, incurred to comply with most provisions of the *Uniform Administrative Requirements for Grants* contained in 40 CFR Part 30 or 40 CFR Part 31. Direct costs for grant administration are ineligible even if the grantee or subgrantee is required to carry out the activity under the grant agreement. Prohibited administrative costs also are all indirect costs under OMB Circulars A-21, A-87, and A-122, and Subpart 31.2 of the *Federal Acquisition Regulation*.
- B. **Statutory Exclusions.** The Brownfields Law provides that the administrative cost prohibition does not apply to:
 1. Investigation and identification of the extent of contamination;
 2. Design and performance of a response action; or
 3. Monitoring of a natural resource.
- C. **Programmatic Costs.** EPA has determined that the administrative cost prohibition does not apply to “programmatic” costs, i.e., costs for activities that are integral to achieving the purpose of the grant, even if EPA considered the costs to be “administrative” under the prior brownfields program. For example, the prohibition does not apply, under a revolving loan fund grant, to costs incurred in making loans (such as the costs of loan processing, legal fees, and professional services) or overseeing the borrower’s activities to ensure compliance with relevant and appropriate requirements of the *National*

Contingency Plan (see 40 CFR §300.700 *et seq.*). These costs are programmatic, not administrative. Direct costs, as defined in the applicable OMB Cost Principle Circular, for the following programmatic activities are not subject to the administrative cost prohibition:

1. In the case of grants for site characterization and assessment, expenses for inventorying, characterizing, assessing, and conducting planning related to brownfield sites.
2. In the case of grants for capitalization of revolving loan funds:
 - (a) expenses for making and managing loans,
 - (b) expenses, including financial management expenses, for operating the revolving fund, and
 - (c) expenses for making and managing subgrants under CERCLA §104(k)(3)(B)(ii).
3. In the case of grants for direct use by eligible entities and nonprofit organizations in remediation of brownfield sites under CERCLA §104(k)(3)(A)(ii), expenses for site remediation activities.
4. In the case of grants for implementation of brownfields programs under CERCLA §104(k)(6), expenses for providing training, research, and technical assistance.
5. Costs incurred for complying with procurement provisions of 40 CFR Part 30 and 31 are considered eligible programmatic costs only if the procurement contract is for services or products that are direct costs for performing activities specified above in Section B, “Statutory Exclusions,” or Section C, “Programmatic Costs.”
6. Costs for performance and financial reporting required under 40 CFR 30.51 and 30.52, and 40 CFR 31.40 and 31.41 are eligible programmatic costs. Performance and financial reporting are essential programmatic tools for both the recipient and EPA to ensure that grants are carried out in accordance with statutory and regulatory requirements.

Eligible programmatic costs can include expenses for travel, training, equipment, supplies, reference materials, and contractual support if those costs are reasonable and allocable to tasks specified in a grantee’s approved scope of work for carrying out the activities described in Section B, “Statutory Exclusions,” or Section C, “Programmatic Costs.”

Eligible programmatic costs may be used to help meet the RLF capitalization grant and direct cleanup grant recipients’ 20 percent cost share. Prohibited administrative costs may not be used to meet recipients’ cost share.

For further information on these prohibitions, contact your Regional Brownfields Contact listed in *Appendix 1*.

Appendix 3. Guidance on Sites Eligible for Brownfields Funding Under CERCLA §104(k)

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3.1 Introduction

The information provided in this appendix should be used by applicants as a guide in determining the eligibility of any property for brownfields funding. The following guidance provides the EPA's preliminary views on the types of sites that may be appropriate for funding. EPA is providing this information as guidance to applicants to assist you in developing your proposals for funding under CERCLA §104(k). This guidance provides preliminary interpretations and policy guidance that EPA intends to use as a guide when we exercise our authority to award funds under §104(k). However, we believe that further development may impact our view of these provisions, and we will reevaluate our preliminary views in light of the factual information we receive with each proposal, as well as over the course of implementing the §104(k) grant program.

This guidance does not impose legally-binding requirements. Applicants are free to raise questions about the appropriateness of these preliminary views, and EPA will consider whether these preliminary views are appropriate at that time. Any decision by EPA to apply this preliminary guidance will be made based on the applicable statutory provisions.

3.2 General Definition of Brownfield Site

The new Brownfields Law defines a “Brownfield Site” to mean:

“...real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant.”

Brownfield sites include all “real property,” including residential, as well as commercial and industrial properties. Brownfields funding may be provided for the assessment and/or cleanup of the presence or potential presence of indoor and outdoor contaminants at a brownfield sites.

3.3 Additional Areas Specifically Eligible for Funding

The Brownfields Law identifies three types of properties that are specifically eligible for funding:

1. Sites contaminated by *controlled substances*.
2. Sites contaminated by *petroleum or a petroleum product*.
3. *Mine-scarred lands*.

See below for guidance on determining the scope of each of these three types of sites. Applicants should identify properties included within their funding proposals that fall within the scope of any of the following three areas.

3.3.1 Contamination by Controlled Substance

Sites eligible for funding include real property, including residential property, that is contaminated by a controlled substance. A “controlled substance” is defined under the Controlled Substances Act as “a drug or other substance, or immediate precursor, included in schedule I, II, III, IV, or V of part B of this title (21 USC Section 812). The term does not include distilled spirits, wine, malt beverages, or tobacco...”

For example, sites eligible for brownfields funding may include private residences, formerly used for the manufacture and/or distribution of methamphetamines or other illegal drugs where there is a presence or potential presence of controlled substances or pollutants, contaminants, or hazardous substances (*e.g.*, red phosphorous, kerosene, acids).

3.3.2 Contamination by Petroleum or Petroleum Product

Petroleum-contaminated sites (except those sites receiving LUST trust fund monies) are eligible for brownfields funding. Petroleum-contaminated sites (or portions of properties contaminated with petroleum) that are eligible for brownfields funding include certain sites that are not underground storage tank (UST) sites, as described below. Petroleum is defined under CERCLA as “crude oil or any fraction thereof which is not otherwise specifically listed or designated as a hazardous substance under that section.”

Applicants should note that the Brownfields Law restricts eligibility for brownfields funding to petroleum contaminated sites that EPA or the state determines:

1. Are of “relatively low risk” compared with other “petroleum-only” sites in the state; and
2. For which there is no viable responsible party and will be assessed, investigated, or cleaned up by a person that is not potentially liable for cleaning up the site; and
3. Are not subject to a corrective action order under the Resource Conservation and Recovery Act (RCRA §9003(h) order).

In the case of proposals that include requests for an assessment or direct cleanup grant, or a grant for a revolving loan fund, to address petroleum-contaminated sites, applicants are encouraged to indicate whether the site meets each of the criteria listed above. An explanation of each of these three criteria is provided below.

Relatively Low Risk:

Applicants whose brownfield site(s) include properties or portions of properties contaminated with petroleum or petroleum products are encouraged to provide information in their proposal indicating that the property represents a relatively low risk (compared to other petroleum-only sites). Our preliminary view is that the following types of petroleum-contaminated sites are high risk sites, or are **not** of “relatively low risk.” Our preliminary view is that petroleum-contaminated sites that do not fall within scope of high risk sites, will be considered to be “relatively low-risk” sites.

- “High risk” sites currently being cleaned up using LUST trust fund monies.

- Any petroleum-contaminated site that currently is subject to a response under the Oil Pollution Act (OPA).

Note: Any site that does not fall under any of the provisions listed above would be considered to be of relatively low risk for purposes of determining eligibility for a brownfields grant.

“No Viable Responsible Party” and “Cleaned Up by a Person Not Potentially Liable”:

Brownfields funding may be awarded to eligible entities for the assessment and cleanup of petroleum-contaminated sites in those instances where the eligible entity has not caused or contributed to the petroleum contamination. When responding to the threshold criteria in their funding proposals, applicants are asked to indicate whether or not the applicant owns the site or sites for which funding is requested and describe whether the applicant is responsible for any of the environmental concerns at the site(s).

Please note that eligibility for a brownfields grant **DOES NOT** waive liability under RCRA Subtitle I, OPA, or any applicable state underground storage tank regulations.

“Not Subject to any Order Issued under RCRA §9003(h)”:

Any site that is under a RCRA Subtitle I corrective action order (RCRA §9003(h)) is not eligible for a grant.

Applicants should note that any determination that a site is of “relatively low risk” has meaning solely for the purposes of determining eligibility for a brownfields grant and has no effect on potential liability under RCRA §9003(h) (for the costs of corrective action and enforcement) or liability under other federal statutes such as under §311(c) of the Clean Water Act (CWA) and §1002 of OPA (for removal costs and damages that result from the discharge of oil into navigable waters).

3.3.3 Mine-scarred Lands

Under the new Brownfields Law, mine-scarred lands are eligible for brownfields funding. Applicants for brownfields funding that include properties within their proposal that they believe fall within the following definition of mine-scarred lands are encouraged to provide in the site description section of their proposals information identifying and describing such properties.

EPA’s preliminary view is that “mine scarred lands” are those lands, associated waters, and surrounding watersheds where extraction, beneficiation, or processing of ores and minerals (including coal) has occurred. For the purposes of this section, the definition of extraction, beneficiation, and processing is the definition found at 40 CFR 261.4(b)(7).

Mine-scarred lands include abandoned coal mines and lands scarred by strip mining.

Examples of coal mine scarred lands may include, but are not limited to:

- abandoned surface coal mine areas,
- abandoned deep coal mines,
- abandoned coal processing areas,
- abandoned coal refuse areas,
- acid or alkaline mine drainage, and
- associated waters affected by abandoned coal mine (or acid mine) drainage or runoff, including stream beds and adjacent watersheds.

Examples of non-coal hard rock mine scarred lands may include, but are not limited to:

- abandoned surface and deep mines,
- abandoned waste rock or spent ore piles,
- abandoned roads constructed wholly or partially of waste rock or spent ore,
- abandoned tailings, disposal ponds, or piles,
- abandoned ore concentration mills,
- abandoned smelters,
- abandoned cyanide heap leach piles,
- abandoned dams constructed wholly or partially of waste rock, tailings, or spent ore,
- abandoned dumps or dump areas used for the disposal of waste rock or spent ore,
- acid or alkaline rock drainage, and
- waters affected by abandoned metal mine drainage or runoff, including stream beds and adjacent watersheds.

3.4 Particular Classes of Sites Not Eligible for Funding or Eligible Only Under Property-specific Determinations

EPA excludes the following types of facilities from funding eligibility unless the applicant fulfills the requirements for demonstrating that the site meets the criteria for a property-specific determination for funding (see *Appendix 4 Guidance for Requests for Property-Specific Determinations for Funding*). Applicants are encouraged to indicate within the site description section of their proposal if any site or property included within the scope of their funding proposal falls within the scope of any of the categories of sites listed below. When requesting a property-specific determination for funding, applicants should follow the instructions provided in *Appendix 4* for indicating that brownfields funding at such sites will ensure protection of human health and the environment and promote economic development or the creation or preservation of greenspace or recreational areas. (Note: The following discusses limitations on funding particular classes of sites. Many of these limitations reflect policy decisions. Where the limitations are based on statutory provisions, we have noted that.)

Also, please note that in providing funding for brownfield sites, EPA wants to ensure that limited monies are not provided to a site where EPA has a planned or ongoing enforcement action. While EPA does not intend that the existence of a planned or ongoing enforcement action will necessarily disqualify a site from receipt of brownfields funding, EPA does believe it is necessary that EPA be aware of the existence of any such action in making funding decisions. As a result, EPA will conduct an investigation to evaluate whether a site is, or will be, subject to an

enforcement action under CERCLA or other federal environmental statutes. EPA is requesting that applicants identify ongoing or anticipated environmental enforcement actions related to the brownfield site for which funding is sought.

Sites Not Eligible for Funding Without a Property-Specific Determination

- Facilities subject to planned or ongoing CERCLA removal actions.
- Facilities listed (or proposed for listing) on the National Priorities List (NPL).*
- Facilities subject to unilateral administrative orders, court orders, administrative orders on consent, or judicial consent decrees issued to or entered into by parties under CERCLA.*
- Facilities that are subject to unilateral administrative orders, court orders, administrative orders on consent, or judicial consent decrees or to which a permit has been issued by the United States or an authorized state under the Solid Waste Disposal Act (as amended by the Resource Conservation and Recovery Act), the Federal Water Pollution Control Act (FWPCA), the Toxic Substances Control Act (TSCA), or the Safe Drinking Water Act (SDWA).
- Facilities subject to corrective action orders under RCRA (§3004(u) or §3008(h)) and to which a corrective action permit or order has been issued or modified to require the implementation of corrective measures.
- Facilities that are land disposal units that have filed a closure notification under Subtitle C of RCRA and to which closure requirements have been specified in a closure plan or permit.
- Facilities that are subject to the jurisdiction, custody or control of the United States government. *

NOTE: Land held in trust by the United States government for an Indian tribe is eligible for brownfield funding.

- Facilities where there has been a release of polychlorinated biphenyls (PCBs) and are subject to remediation under TSCA.
- Portions of facilities for which funding for remediation has been obtained from the LUST trust fund.

* Sites *not* eligible for property-specific funding determinations.

Guidance regarding the scope of each of the funding restrictions listed above is provided below.

3.4.1 Facilities Subject to CERCLA Removal Actions

Properties (including parcels of properties) where there are removal actions may not receive funding, unless EPA makes a property-specific determination of funding eligibility.

EPA's preliminary view is that a removal may be identified by the occurrence of one of the following events, whichever occurs first in time: EPA issues an action memo, EPA issues an EE/CA approval memo; EPA mobilizes onsite; or EPA issues a notice of federal interest to one or more potentially responsible parties (PRP(s)), which in emergencies may be made verbally.

Our preliminary view is that, for the purposes of eligibility to receive brownfields funding, and for no other reason, a removal is complete, i.e., when the actions specified in the action memorandum are met, or when the contractor has demobilized and left the site (as documented in the "pollution report" or POLREP). Applicants applying for brownfields funding for sites at which removal actions are complete must include documentation of the action being complete with their funding proposal.

Parcels of facilities not affected by removal action at the same property may apply for brownfields funding and may be eligible for brownfields funding on a property-specific basis. Property-specific funding decisions will be made in coordination with the on-scene coordinator (OSC) to ensure that all removals and cleanup activities at the property are conducted in safe and protective manners and to ensure that the OSC retains the ability to address all risks and contamination.

Please note that if a federal brownfields-funded site assessment results in identifying the need for a new removal action, the grantee may continue to expend assessment grant funds on additional assessment activities. However, any additional expenditure of federal brownfield funds and any additional site assessment activities should be conducted in coordination with the OSC for the site.

3.4.2 Facilities Subject to Unilateral Administrative Orders, Court Orders, Administrative Orders on Consent, or Judicial Consent Decrees Issued to or Entered into by Parties Under CERCLA

Sites subject to administrative orders, court orders, and consent or judicial consent decrees issued or entered into by parties under the provisions of CERCLA are not eligible for funding, even on a property-specific basis. Therefore, applicants should not include such sites within the scope of their brownfields funding proposals.

3.4.3 Facilities Listed (or Proposed for Listing) on the National Priorities List

CERCLA sites listed on the NPL and sites proposed to be listed on the NPL are not eligible for brownfields funding. In addition, these sites are not eligible for funding on a property-specific basis. Therefore, applicants should not include proposed or listed NPL sites within the scope of brownfields funding proposals.

3.4.4 Facilities to which a permit has been issued by the United States or an authorized state under the Solid Waste Disposal Act (RCRA), the Federal Water Pollution Control Act, the Toxic Substances Control Act, or the Safe Drinking Water Act

Generally, in cases where a property or a portion of a property is permitted under the Resource Conservation and Recovery Act, Section §1321 of the Clean Water Act, the Safe Drinking Water Act, and/or the Toxic Substances and Control Act, the property, or portion of the property, may not receive funding, without a property-specific determination. Therefore, applicants should review the following guidance regarding which types of permitted facilities may not receive funding unless EPA makes a property-specific determination to provide funding. Applicants should note that the exclusion for permitted facilities does not extend to facilities with National Pollutant Discharge Elimination System (NPDES) permits issued under the authorities of the Federal Water Pollution Control Act, but is limited to facilities issued permits under the authorities of the Oil Pollution Act (*i.e.*, §1321 of FWPCA).

In cases where one or more portions of a property are not eligible for funding, the applicant should identify the specific permit and situation that causes the property to be excluded. In addition, the applicant must include, within the proposal, documentation that federal brownfields funding for the assessment or cleanup of the property will further the goals established for property-specific funding determinations (see attached guidance on property-specific funding determinations).

Any property or site that has been issued a permit under the federal environmental statutes listed above (and in accordance with any additional guidelines provided below) may be eligible for brownfields funding if a grant or loan applicant can demonstrate that brownfields funding will ensure protection of human health and the environment and promote economic development, or the preservation of greenspace. EPA will consider providing funding to an eligible entity for assessment or cleanup activities at the site, on a property-specific basis (see guidance on documenting eligibility for property-specific funding determinations provided below).

In some cases, a facility may not have a permit or order because they are not in compliance with federal or state environmental laws requiring that they obtain a permit or the facility has failed to notify EPA of their regulatory status. Such facilities are not eligible for brownfields funding. For example, a RCRA treatment unit operator is required to obtain a permit and/or notify EPA of its operation. An operator that fails to fulfill those obligations will likely not have a permit or order as EPA will be unaware of their existence. Therefore, it is EPA's preliminary view that such facilities are ineligible to receive brownfields funds as a result of their failure to comply with a basic regulatory requirement. Additional guidance on the eligibility of RCRA-permitted facilities, including facilities under administrative or court orders, including corrective action orders is provided below.

3.4.5 RCRA Sites

Excluded RCRA Facilities

EPA's preliminary view is that the following types of RCRA facilities ***may not receive funding without a property-specific determination***:

- *RCRA-permitted facilities.*
- RCRA interim status facilities with administrative orders requiring the facility to conduct corrective action or otherwise address contamination, including facilities with orders issued under the authorities of RCRA §3008(a), §3008(h), §3013, and §7003.
- Facilities under court order or under an administrative order on consent or judicial consent decree under RCRA or CERCLA that require the facility to conduct corrective action or otherwise address contamination at the facility.
- Land disposal units that have notified EPA or an authorized state of their intent to close and have closure requirements specified in closure plans or permits.

However, if a grant or loan applicant is requesting a grant for property that is excluded, the applicant may still be eligible for a brownfields grant, if the applicant can demonstrate that funding will ensure protection of human health and the environment and promote economic development, or the preservation of greenspace. EPA will consider providing funding to an applicant for assessment or cleanup activities at such a site on a property-specific basis (see guidance on documenting eligibility for property-specific funding determinations below).

RCRA Facilities that are Eligible for Funding

EPA's preliminary view is that the following types of RCRA facilities would not fall within the scope of the exclusion and would be eligible for funding:

- RCRA interim status facilities that are not subject to any administrative or judicial order or consent decree;
- RCRA interim status facilities that are subject to administrative or judicial orders that do ***not*** include corrective action requirements or any other cleanup provisions (*e.g.*, RCRA §3008(a) orders without provisions requiring the owner/operator to address contamination); and
- Parcels of RCRA facilities that are not under the scope of a RCRA permit or administrative or judicial order.

3.4.6 Land disposal units that have filed a closure notification under Subtitle C of RCRA and to which closure requirements have been specified in a closure plan or permit.

RCRA hazardous waste landfills that have submitted closure notifications, as required under 40 CFR 264.112(d) or 265.112(d) generally will not be funded. This may include permitted facilities that have filed notification of closure and for which EPA and/or an authorized state is proceeding with final closure requirements for the facility. For interim status facilities, this is done through approval of a closure plan submitted with closure notification; for permitted facilities, this is routinely done as a modification to the permit, requested by the facility at the time of closure notification.

3.4.7 Facilities that are subject to the jurisdiction, custody, or control of the United States government.

Facilities owned by, or under the custody or control of the federal government are not eligible for brownfields funding, even on a property-specific basis. EPA's preliminary view is that this exclusion may not extend to:

- Privately-owned, Formerly Used Defense Sites (FUDS)
- Privately-owned, Formerly Utilized Sites Remedial Action Program (FUSRAP) properties
- Other former federal properties that have been disposed of by the U.S. government

Also note that land held in trust by the United States government for an Indian tribe is not excluded from funding eligibility.

Also note that eligibility for brownfields funding does not alter a private owner's ability to cost recover from the federal government in cases where the previous federal government owner remains liable for environmental damages.

3.4.8 Sites Contaminated with PCBs

The Brownfields Law excludes from funding eligibility portions of facilities where there has been a release of PCBs that are subject to remediation under TSCA.

EPA's preliminary view is that all portions of properties *are eligible* for brownfields site assessment grants, except where EPA has initiated an involuntary action with any person to address PCB contamination. Also, it is our preliminary view that all portions of properties *are eligible* for cleanup and RLF grants, except where EPA has an ongoing action against a disposer to address PCB contamination.

Therefore, portions of properties that are excluded from funding eligibility include those portions of properties where:

- There is a release (or disposal) of any waste meeting the definition of "PCB remediation waste" at 40 CFR 761.3; *and*

- At which EPA has initiated an involuntary action with any person to address the PCB contamination. Such involuntary actions could include:
 - Enforcement action for illegal disposal,
 - Regional Administrator's order to characterize or remediate a spill or old disposal (40 CFR 761.50(b)(3)),
 - Penalty for violation of TSCA remediation requirements,
 - Superfund removal action, or
 - Remediation required under RCRA §3004(u) or §3004(v).

PCBs may be remediated under any one of the following provisions under TSCA:

- Section 761.50(b)(3), the directed characterization, remediation, or disposal action.
- Section 761.61(a), the self-implementing provision.
- An approval issued under §761.61(c), the risk-based provision.
- Section 761.61(b) to the level of PCB quantification (i.e., 1 ppm in soil).
- An approval issued under §761.77, the coordinated approval provision.
- Section 761.79, the decontamination provision.
- An existing EPA PCB Spill Cleanup Policy.
- Any future policy or guidance addressing PCB spill cleanup or remediation specifically addressing the remediation of PCBs at brownfield sites.

3.4.9 Exclusion of LUST Trust Fund Sites

The Brownfields Law excludes from eligibility for funding (unless EPA makes a property-specific determination for funding) those sites (or portions of properties) for which assistance for response activity has been obtained under Subtitle I of RCRA from the LUST trust fund. EPA's preliminary view is that this provision may exclude:

- UST sites where money is being spent on actual assessment and/or cleanup of UST/petroleum contamination.

However, in cases where an UST site is located in a state where the state agency has used LUST trust fund money for state program oversight activities but has not expended LUST trust funds for specific assessment and/or cleanup activities at the site, the site would not necessarily be excluded from eligibility for brownfields funding.

Such sites may receive brownfields funding on a property-specific basis, if it is determined that brownfields funding will protect human health and the environment and the funding will promote economic development or enable the creation of, preservation of, or addition to greenspace (see guidance on documenting eligibility for property-specific funding determinations provided below).

Examples of “excluded” sites (i.e., sites receiving LUST trust fund monies) we would consider to be good candidates to receive brownfields grants or loans:

- All USTfields pilots (50 pilots)
- Sites (or portions of properties) where an assessment was completed using LUST trust fund monies and the state has determined that the site is a low-priority UST site and therefore additional LUST money cannot be provided for the cleanup of petroleum contamination, but the site still needs some cleanup and otherwise is a good candidate for economic revitalization.
- Sites (or portions of properties) where LUST money was spent for emergency activities, but then the site was determined to be ineligible for further expenditures of LUST trust funds, yet the site needs additional funding for continued assessment and/or cleanup that will contribute to economic revitalization of the site.

Appendix 4. Guidance for Requests for Property-Specific Determinations for Funding

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4.1 Overview

Grant applicants must determine if any of the properties, or facilities, included in their proposal only are eligible for funding as the result of a property-specific determination. A list of the categories of facilities that only are eligible for funding via a property-specific determination is provided below.

If an applicant includes within the scope of a grant proposal a facility that requires a property-specific funding determination, the proposal must include, on a separate page, the following information (to the extent this information replicates information requested elsewhere in the proposal, the applicant may directly copy the text to this page):

1. Basic site identification information and eligible entity identification information.
2. The specific circumstance that requires the grantee to request a property-specific determination (from the list in Section 3.4 of *Appendix 3*).
3. A short explanation of why the site falls within the identified circumstance requiring the property-specific funding determination.
4. An explanation of how providing brownfields funding for the site will meet the criteria necessary for making a property-specific funding determination (see below).
5. The degree to which other funding is or is not available for the assessment or cleanup of the site.
6. A explanation of whether or not the applicant is responsible for the contamination at a site.

The information provided will be used in making a property-specific determination for funding purposes, which will take place during the proposal evaluation process.

4.2 Funding Limitations

Although the statutory definition of “brownfield site” is broad, Congress limited the extent to which brownfields **funding** may be provided to eligible entities to assess and clean up sites that are being addressed under other federal programs. In addition, the Brownfields Law prohibits the use of grant and loan funds for the payment of response costs at sites for which the funding recipient of the grant or loan is potentially liable under §107 of CERCLA.⁷ (See *Appendix 2* for additional prohibitions on the use of brownfields funding.)

The types of facilities that Congress **excluded from** funding eligibility are listed below. However, certain facilities listed below as excluded from funding eligibility, may still qualify for brownfields funding. The types of facilities marked with an **asterisk (*)** below are eligible for brownfields funding if a property-specific determination is made that funding for assessment or cleanup activities will meet the criteria set forth in the statute and meet the goals and criteria of the brownfields program.

⁷ Applicants also should note that the Brownfields Law contains other prohibitions on the use of grant and loan monies, including the use of grant and loan monies for paying penalties, administrative costs, federal cost-share requirements, and the cost of complying with any federal law (see §101(k)(4)(B)).

- Facilities subject to planned or ongoing removal actions under CERCLA.*
 - Facilities currently listed, or proposed to be listed, on the NPL.
 - Facilities subject to a unilateral administrative order, a court order, an administrative order on consent, or a judicial consent decree under CERCLA.
 - Facilities that have been issued or entered into a unilateral administrative order, a court order, an administrative order on consent, or judicial consent decree or to which a permit has been issued by the U.S. or an authorized state under RCRA, FWPCA, TSCA, or SDWA.*
 - Facilities subject to RCRA corrective action (§3004(u) or §3008(h)) to which a corrective action permit or order has been issued or modified to require the implementation of corrective measures.*
 - Land disposal units that have submitted a RCRA closure notification or that are subject to closure requirements specified in a closure plan or permit.*
 - Facilities subject to the jurisdiction, custody, or control of a department, agency, or instrumentality of the U.S., except for land held in trust for an Indian tribe.
 - Portions of facilities where there has been a release of PCBs and is subject to TSCA remediation.*
 - Facilities receiving monies for cleanup from the LUST trust fund.*
- * Sites eligible for property-specific funding determinations.

The types of facilities marked with an asterisk above may qualify for brownfields funding if EPA makes a property-specific determination that brownfields funding will protect human health and the environment **and** will either promote economic development or the creation, preservation, or addition to parks, greenways, undeveloped property, other recreational property, or other property used for nonprofit purposes. A determination of eligibility for funding will be made by EPA at the time of proposal evaluation.

Grant applicants must determine whether the property or properties that are the subject of their proposal fall within the scope of one or more of the funding exclusions listed above. Actual determinations of eligibility or exclusion will be made by EPA. However, if one or more sites that are the subject of a grant proposal fall within the scope of any of the facility types listed above, the grant proposal should specifically identify the site or sites, identify the applicable funding exclusion from the list above, and describe why each site falls within the exclusion. Descriptions summarizing the scope of each of the funding exclusions listed above are provided in *Appendix 3* of these guidelines.

4.3 Criteria for Determining Eligibility for Funding on a Property-Specific Basis

Certain sites that are excluded from funding eligibility because the sites fall within the scope of the statutory exclusions from the definition of “brownfield site” may qualify for brownfields funding if a property-specific determination is made that the sites meet the goals and criteria of the brownfields program and the criteria set forth in the statute. The following types of facilities, although excluded from the definition of brownfield site above, are ***eligible for property-specific determinations for brownfields funding***:

1. Facilities subject to planned or ongoing removal action under CERCLA.
2. Facilities to which a permit has been issued by U.S. or authorized state under RCRA, FWPCA, TSCA, or SDWA.
3. Facilities subject to RCRA orders requiring corrective action (§3004(u) or §3008(h)).
4. Land disposal units that have submitted a RCRA closure notification or that are subject to closure requirements specified in a closure plan or permit.
5. Portions of facilities where there has been a release of PCBs and is subject to TSCA remediation.
6. Facilities receiving monies for cleanup from the LUST trust fund.

In the case of each type of facility listed above, the new legislation allows EPA to award financial assistance *to an eligible entity* for assessment or cleanup activities at the site, if it is found that financial assistance will:

1. Protect human health and the environment, *and*
2. Either:
 - promote economic development, or
 - enable the creation of, preservation of, or addition to parks, greenways, undeveloped property, other recreational property, or other property used for nonprofit purposes.

Grant proposals for brownfields funding that include, within the scope of planned assessment or cleanup activities, sites, properties, or facilities that potentially fall within any of the funding exclusions listed above, should specifically identify such sites and explain, in as much detail as possible, why the availability of brownfields funding will protect human health and the environment and promote economic development or the creation or preservation of greenspace (or other listed objectives). Information provided by the applicant in addressing these criteria will be used in documenting EPA's decision in making property-specific determinations for funding eligibility.

4.3.1 Protection of Human Health and the Environment

Grant applicants must provide a detailed discussion of how financial assistance for brownfields assessment or cleanup activities at each site for which a property-specific determination for funding eligibility must be made will result in the allocation of funding in accordance with legislative intent. Each proposal for financial assistance, including a recipient of a revolving loan fund grant seeking EPA approval of loans, whose proposal includes one or more sites for which a property-specific determination must be made must include a discussion of how brownfields funding will ensure protection of human health and the environment. Documentation supporting a determination that brownfields funding will ensure protection of human health and the environment should include documentation of one or more of the following:

- Specific examples of human health risks that will be mitigated by activities funded under a brownfields grant.
- Specific environmental improvements that can reasonably be expected to result from activities funded under a brownfields grant.
- Specific examples of contamination that will be addressed, including the specific hazardous substances, pollutants, or contaminants of concern and the environmental media that will be addressed.
- Description of how the proposed cleanup and redevelopment of the property will ensure that the property will be protective of human health and the environment and that the remedy will be both protective and consistent with the planned reuse of the property.

4.3.2 Promote Economic Development

Applicants also must provide detail on how financial assistance will promote economic development or the creation of, preservation of, or addition to parks, greenways, undeveloped property, other recreational property, or other property used for nonprofit purposes. Documentation of economic development activities should include information such as the following:

- A description of economic development activities that can reasonably be expected to occur as a result of brownfields funding (*e.g.*, number of jobs created, estimated increase in the property and/or profits/sales tax base to community, additional business expansion or new business relocation that may occur within the community).
- A description of how the redevelopment of the brownfields property will contribute to community-wide redevelopment and revitalization plans with a specific emphasis on how funding for the brownfields redevelopment is integral to the success of the community-wide plan.
- A description of new businesses or business expansions that are planned for the brownfields property.

4.3.3 Creation of, Preservation of, or Addition to Parks, Greenways, Undeveloped Property, other Recreational Property, or Other Property Used for Nonprofit Purposes

If brownfields funding will be used by the applicant to preserve or create greenspace, recreational areas, undeveloped property, or property to be used for nonprofit purposes, the applicant should provide specific documentation of these activities in the proposal. Grant proposals should provide specific information documenting how brownfields funding will result in the creation of, preservation of, or addition to parks, greenways, undeveloped property, other recreational property, or other property used for nonprofit purposes should include information such as:

- A description of the proposed park, recreational property, greenspace, undeveloped space, or other type of property to be used for nonprofit purposes, including size, use, and surrounding environment that will be preserved or created as a result of brownfields funding.

- An assessment of how the property will be used and by whom.
- A description of how the property will be integrated with surrounding properties or environments.
- A description of how the property will be maintained or preserved for its continued use as a greenspace, recreational area, etc.

When documenting compliance with these criteria, applicants may copy information provided elsewhere in their proposal, if such information directly addresses the criteria. However, all documentation must be comprehensive and specific to actual events that will be mitigated or can reasonably be expected to occur as a result of federal brownfields funding, should the applicant receive brownfields funding.

4.3.4 Other Documentation

Property-specific brownfields funding determinations will be made based upon the availability of funding and the extent to which applicants can provide documentation that funding for particular sites offers opportunities to protect human health and the environment and enhance economic development or create or preserve greenspace (as the criteria is described above). However, at the same time, Congress explicitly prohibited the use of federal brownfields funding to reimburse liable parties for response costs. The statute prohibits grant and loan monies from being used for the payment of response costs at brownfield sites for which the recipient of a grant or loan is potentially liable (§101(k)(4)(B)(i)(IV)). Applicants are encouraged to address, in the body of the proposal, why federal funding is appropriate for brownfields assessment and/or cleanup at the site, given that brownfields funding cannot be used to reimburse liable property owners for response activity costs.

4.4 Properties Not Eligible for Brownfields Funding

Grant applicants must keep in mind that the legislation *excludes certain types of facilities from qualifying for the property-specific* funding determinations and therefore from federal brownfields financial assistance. Sites or facilities that *may not* be included within the scope of a grant proposal and for which brownfields grants and loans cannot be made available *regardless of property-specific circumstances* include the following types of sites or facilities:

- Facilities listed or proposed for listing on the NPL.
- Facilities subject to a unilateral administrative order, an administrative order, a court order, an administrative order on consent, or a judicial consent decree issued or entered into by parties under CERCLA.
- Facilities that are subject to the jurisdiction, custody, or control of the United States government, except for land held in trust by the U.S. for an Indian Tribe.

Applicants should note that the discussion of property-specific determinations for funding sites that are otherwise excluded from funding eligibility that is provided here only applies to funding determinations. This discussion does not apply to, or have bearing on, any other property-specific determinations or other aspects of the brownfields program. For example, a property-

specific determination for funding purposes in no way affects a facility's or an entity's status with regard to EPA's enforcement and cost recovery authorities.

4.5 Additional Information on Potential for Continual Funding at Sites Subject to Removal Actions

Some brownfield sites that receive federal brownfields assessments grants may, as a result of the federally-funded site assessment require a CERCLA removal action. Under the Brownfields Law (§101(39)(B)(i)), sites that are subject to planned or on-going removal actions under CERCLA are excluded from funding eligibility. However, such sites may receive federal brownfields funding if a property-specific determination is made that such funding will meet the property-specific determination criteria. Applicants should follow the procedures listed in the previous section to request a property-specific determination.)Note: If a removal action is required at a site where an assessment grant exists, the grantee does not need to obtain the property-specific determination noted above. However, grant recipients must obtain approval from the EPA removal OSC prior to any onsite work commencing.)

Grant applicants requesting federal brownfields funding and recipients of revolving loan fund grants seeking EPA approval of loans for sites at which a CERCLA removal action is planned or on-going must document in their proposals (or loan approval requests) that the requested funding will be used in accordance with legislative intent. Therefore, proposals must include a discussion of how brownfields grant or loan funds will ensure protection of human health and the environment and provide detail on how financial assistance will promote economic development or the creation of, preservation or, or addition to parks, greenways, undeveloped property, other recreational property, or other property used for nonprofit purposes. Requests for property-specific determinations for funding for the assessment or cleanup of properties where there is a planned or ongoing removal action will be considered in the following circumstances: 1) when it is clear a follow-on response action will be required to address long-term threats at a site; and 2) in cases where portions of a site are not under the current scope of a planned or ongoing removal action.

In addition to the specific criteria listed above, applicants also should explain in their proposal the extent to which other funding sources are not available for the assessment and/or cleanup of the site or property. Federal brownfields funding cannot be used to reimburse liable parties for response costs. In addition, federal brownfields funding may not be used for an ensuing removal action. Applicants should specifically address, in the body of the proposal, why federal funding is appropriate for brownfields assessment and/or cleanup at the site, given the Congressional intent not to reimburse liable property owners for response activity costs.

4.6 Additional Information on Potential Funding for Petroleum-contaminated Sites

As noted above, portions of facilities receiving assistance for response activities from the LUST trust fund are excluded from eligibility for brownfields funding. However, these facilities are eligible for funding on a property-specific basis. To assist applicants in determining whether their sites are good candidates for property-specific funding determinations, below are examples of “ineligible” sites (*i.e.*, sites receiving LUST trust fund monies) EPA considers to be potentially good candidates to receive brownfields grants or loans under the property-specific determination provisions of the Brownfields Law (*i.e.*, CERCLA §101(39)(C)).

- All USTfields pilots.
- Sites (or portions of properties) where an assessment was completed using LUST trust fund monies and the state has not determined the site to be a “high risk” site and, although an assessment was completed using LUST trust fund monies, the site needs further assistance to conduct a cleanup. Although the site is otherwise a good candidate for economic revitalization, additional LUST money cannot be provided for the cleanup of petroleum contamination.
- Sites (or portions of properties) where LUST money was spent for emergency activities, and are otherwise determined to be ineligible for further LUST trust funds, yet the site needs additional funding for continued assessment and/or cleanup that will contribute to economic revitalization of the site.

4.7 Eligible Response Sites/Enforcement Limits

The Brownfields Law limits EPA’s enforcement and cost recovery authorities at “eligible response sites” where a response action is conducted in compliance with a state response program. Section 101(40) defines an “eligible response site” by referencing the general definition of a “brownfield site” in §101(39)(A) and incorporating the exclusions at §101(39)(B). The law places further limitations on the types of sites included within the definition of an eligible response site, but grants EPA the authority to include within the definition of eligible response site, and on a property-specific basis, some facilities that are otherwise excluded from the definition. Such property-specific determinations must be based upon a finding that limits on enforcement will be appropriate, after consultation with state authorities, and will protect human health and the environment and promote economic development or facilitate the creation of, preservation, or addition to a park, a greenway, undeveloped property, recreational property, or other property used for nonprofit purposes. While the criteria appear similar to those for determining eligibility for funding on a property-specific basis, the determinations are distinct, will be made through a separate process, and may not be based on the same information requested in this document for property-specific funding determinations.

For additional information on the definition of “eligible response site,” the limitations of EPA’s enforcement and cost recovery authorities at these sites, and how to apply for a property-specific determination for inclusion within the definition of eligible response site, contact Kenneth Schefski of EPA’s Office of Site Remediation and Enforcement at (202) 564-8213.